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THE MIROSLAV MEDVID INCIDENT

Report

Findings, Conclusions and Recommendations

SUBMITTED TO THE

Commission on Security and Cooperation in Europe

May 1987

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CONTENTS

Page
INTRODUCTION 1
PART I: THE MEDVID INCIDENT 2
A. The Events 2
1. Arrival of the M/V Marshal Konev 2
2. The Ship Jumper 4
3. The Police Encounters 7
a) The Rampart Street Station 7
b) Harbor Police notify Border Patrol 10
4. Border Patrol Processing 13
5. Involuntary Repatriation 19
6. The Disclosure 22
a) INS receives additional information 23
b) Padoch requests assistance 24
c) INS discovers its problem 26
7. Reaction of US Officials 27
a) Border Patrol Agents board the Konev 27
b) Soviet cooperation changes to resistance 28
c) INS and Border Patrol coordination 29
d) US Agenices Coordinate Operations 31
e) State Department Leadership 33
f) Detaining the Konev 34
8. The Konev Confrontations 34
a) The meeting aboard the Konev 34
b) The press is alerted 36
c) Information from Soviet crew members 36
d) Medvid observed in the infirmary 37
9. The Operational Plans 38
a) Development of a contingency plan 39
b) The interagency committee of policymakers 40
c) The internal affairs investigation 41
d) The Wyman interviews 42
10. The Salvia Interview 43
a) Positioning the Coast Guard vessels 43
b) Activities aboard the Konev 43
c) In Washington, DC 44
d) Arrangements proceed for the Salvia interview 44
e) Medvid party prepares to depart the Konev 45
f) Aboard the Coast Guard cutter Salvia 46
g) The interview with Medvid commences 47
h) Removal to the Naval base 51
11. The BOQ Interviews 51
a) Arrival at the BOQ 51
b) A call to the original interpreter 54
c) The final Medvid interview 55
d) The decision to honor Medvid's request 55
12. The Senate Subpoena 56
a) The Agriculture Committee subpoena 57
b) The White House meetings 58
c) Attempts to serve the subpoena 60
B. Factual Issues 62
1. Alleged Collusion Between US/USSR Officials 62
a) Alleged conspiracy to prevent Medvid defection 63
b) Geneva Summit considerations 64

Page
PART I—CONTINUED
B. Factual Issues—Continued
1. Alleged Collusion Between US/USSR Officials—Continued
c) Secret grain agreement 65
d) Executive branch opposition to Senate Subpoena 65
2. The Drugging of Medvid 66
3. Interview Circumstances 68
a) The presence of Soviet officials at the interviews 69
b) Use of Russian language 69
c) Secrecy and seclusion 69
4. The Imposter Theory 69
a) Origin of the "Switch" Theory 70
i) The Times-Picayune News Photograph 70
ii) The Geltz/Cleary Photographs 71
iii) The Matt Rose Photographs 72
iv) Spurlock's Alleged Confession 73
v) The Alleged Spurlock Photograph 75
b) Efforts to resolve the identity issue 77
i) Forensic analysis 77
ii) CSCE request to interview Medvid 78
c) Investigative Findings 78
C. The Infractions 79
1. Jurisdictions over Foreign Vessels and Their Crew 80
2. Requirements of Foreign Vessels Entering US Waters 80
a) US Coast Guard Regulations 81
b) US Customs Service Inspection of Foreign Vessels 82
c) The INS Inspection of Foreign Crewmen 83
3. Crewman Control 87
a) Current Law Regarding Crewmen 87
b) Authority of Border Patrol Agents 88
c) Use of Interpreters 89
d) Incidents of Potential International Impact and Immediate Action Cases 91
e) Authority to Remove an Alien Crewman from his Vessel 94
f) Advice of Rights 95
g) Entry Without Inspection 95
h) Fingerprints 96
4. Enforcement of Senate Subpoena 96
a) Subpoena of Aliens 96
b) Service of a Federal Subpoena 97
c) Mechanisms for the Enforcement of a Senate Subpoena 97
5. The Attorney General's Deference to the Department of State 98
a) Under the Constitution, The Formulation of Immigration Policy is Entrusted Exclusively to Congress 98
b) Congress has Delegated Principal Executive Branch Responsibility over Immigration Matters to the Attorney General 99
c) The Authority of the Executive in Immigration is Limited, Except as Foreign Relations May be Affected 100
d) The Attorney General Must Exercise the Authority and Discretion Vested in Him by Congress 100
e) Failure of the Attorney General to Exercise His Authority and Discretion in Immigration Matters Deprives an Affected Alien of Due Process 101
6. INS Failure to Prevent the Departure of Medvid 102
PART II: OTHER INCIDENTS 102
A. Repatriation Cases 103
1. Case Studies 103
a) Piotr Kalitenko and Gregorij Sarapushkin 103
b) Simas Kudirka 104
c) The Polish Seaman 105
d) Lyudmila Vlasova 105
e) Irina Mamedova 106
f) Andrey Berezhkov 106
g) Sergei Kozlov 107
h) Danut Eugen Vasile 107
2. Case Analyses 108
a) The Role of the Department of State in Repatriation Cases 108

Page

PART II—CONTINUED
A. Repatriation Cases—Continued
2. Case Analyses—Continued
b) Notification to Soviet Officials and Soviet Presence at Interviews 110
c) Soviet Assurances of Non-retaliation 111
d) Contingency Plans 111
e) Psychiatric Aspects 111
B. Deserting Crewmen and Apprehensions 111
CONCLUSIONS 112
RECOMMENDATIONS 114
EXHIBITS 115
APPENDICES 364

INTRODUCTION

This report has been prepared in accordance with section 23(a)(2) of Senate Resolution 353, 99th Congress, 2nd Session, (1986). The Resolution directs the Commission on Security and Cooperation in Europe (CSCE) to submit a report to the House of Representatives and the Senate, based upon its findings of investigation into the attempted defection of Miroslav Medvid and other similar incidents of involuntary repatriation of Soviet and Soviet-bloc nationals, with recommendations for any appropriate changes in US law.

The Commission is an independent agency of the Congress, created in 1976 and charged with the monitoring of, and encouraging compliance with, provisions of the 1975 Final Act (the Helsinki Accords) of the Conference on Security and Cooperation in Europe. The Commission is currently composed of 21 members, nine each from the House of Representatives and the Senate, and 1 each from the Departments of State, Commerce and Defense. The Chairmanship rotates between the House and Senate with each new Congress. In its enabling legislation, the Commission was empowered to issue subpoenae and take sworn testimony.

This investigation was funded with $200,000 from the Senate Contingency Fund. Although initially delayed by legal challenges and administrative "start-up" tasks, the investigation began in July 1986, with research into available public source background material. By September 1986, fieldwork commenced, consisting primarily of witness interviews, records reviews and search for other evidentiary materials. The evidence collection phase paralleled the sequence of original Medvid events, beginning in the New Orleans area and progressing to Washington, DC.

More than 200 interviews and 100 informal contacts were conducted by CSCE investigators. A few investigative initiatives were hampered by foreign government and Executive Branch decisions to deny access to certain witnesses and records. However, the effect of the omissions was minimized by the preponderance of other available evidence on the issues. A particular concern of the investigators was to elicit the best possible recollections of witnesses regarding events which transpired more than one year ago. This concern was also ameliorated by the quantity and the quality of corroberative evidence gathered.

The following report presents a narrative story of The Medvid Incident, followed by the factual and legal issues raised by the events (Part I). The second section examines Other Incidents of repatriation cases, including case studies and analyses, and a statistical examination of deserting crewmen and apprehensions.

PART I: THE MEDVID INCIDENT

Part I of this report includes an exhaustive review of the events of the Miroslav Medvid incident and a discussion of specific factual and legal issues raised by these events. Previous Congressional hearings on this subject have been reviewed and are being included as exhibits.

A. The Events

The Miroslav Medvid incident is recreated below as an objective narrative chronology, in its entirety, based upon documentary and forensic evidence, prior testimony, interviews with principal witnesses, and other extensive investigative findings. Any contradictory testimonial evidence on significant points of fact has been indicated in the text.

1. ARRIVAL OF THE M/V MARSHAL KONEV

On October 4, 1985, Universal Shipping Agencies, Inc. (USA), a New Orleans shipping agent, submitted a formal request to US Coast Guard Headquarters in Washington, DC, on behalf of the USSR bulk carrier Merchant Vessel Marshal Konev (Konev) seeking permission for the ship to visit various US ports, including New Orleans, for the purpose of loading grain destined for the Soviet Union. Coast Guard Headquarters routinely approved the request and so notified Coast Guard 8th District Operations Center, New Orleans, which in turn advised Universal Shipping, the vessel's agent, on October 15, 1985.

At 6:00 am on October 24, 1985, the M/V Marshal Konev arrived at the Port of New Orleans (mouth of the Mississippi River). The US Customs Assignment Desk granted a preliminary clearance (foreign entry clearance) which allowed the ship to conduct business prior to the issuance of a formal entry clearance. Since a loading berth was not immediately available, the ship, under the guidance of a local pilot, proceeded upriver to Belle Chasse Anchorage, near New Orleans, at River Mile 75. [EXHIBIT #1]

The ship anchored at approximately 3:15 pm and was immediately boarded by its shipping agent, US Customs officials, and US Department of Agriculture (USDA) inspectors. A number of preclearances were requested and granted. The shipping agent, Mike Flad, was present to assist the Captain with the required paperwork and to deal with Federal inspectors, as part of USA's contracted duties.

A Customs inspector from the US Treasury Department boarded the Konev, checked all vessel clearances and activated a bond to insure that the vessel would ultimately comply with all rules and regulations while in United States territorial waters. The various Federal inspectors presented themselves to the Captain of the vessel prior to commencing their work. They were instructed by the Captain not to mingle or talk with any members of the crew, except as required by their duties. They were always escorted by a crew member while on board.

Gary Holmes and Emmett Johnson, commodity graders for USDA's Federal Grain Inspection Service, conducted a routine inspection of the Konev's cargo holds. They divided their workload, a standard operating practice, and certified the ship ready to receive grain at one of the grain elevators near New Orleans. The Captain was issued the usual certification and the two USDA agents departed, without incident, at approximately 6:15 pm.

INS inspectors Jeffrey Weldon and Terry Lee Goodpaster had been in Venice, LA, near the mouth of the Mississippi River inspecting another ship, when they were instructed to inspect the Marshal Konev before returning to New Orleans. Although their normal shift is 9:00 am to 5:00 pm, the inspection in Venice had taken much longer than expected because the vessel had not prepared the required paperwork in advance. As a result, it was almost 5:00 pm when the two INS agents boarded the Marshal Konev at Belle Chasse.

Although there were four or five Soviet seamen on deck when they boarded, nothing was said to the inspectors and they were immediately taken to the Captain's quarters. Mike Flad and the Customs inspector were already there, meeting with the Captain in one corner of the room. Weldon and Goodpaster were shown to a desk where they sat down and began their inspection process.

Weldon and Goodpaster were presented with the passports and seaman's books for all the ship's crew and an INS Form I-418 (Crew List) for the Konev. [EXHIBIT #2] Goodpaster compared the crew list with his service lookout book and found no crew names requiring special attention.

The inspectors then began reviewing the passports and seaman's books. Goodpaster told CSCE investigators that the INS Forms I-95 (Crewman's Landing Permits) had not been completed as required. He said the Captain told him that he did not have any blank forms and that he had not advised the shipping agent of the need for them. [Mike Flad did not recall, during an interview, whether the I-95 forms had been available during the INS inspection, but claimed that he always carries extra blank forms in his briefcase.]

The INS inspectors determined that the ship's entire crew was to be "detained on board (DOB)". For this reason, and in an effort to save time, Weldon and Goodpaster decided not to require Flad or the Captain to complete the required I-95 forms. Instead, they asked the Captain whom he wanted to be "paroled" into the US to conduct business on behalf of the ship, and issued INS Forms I-94 (Arrival-Departure Records) paroling Captain Rionges Tkachenko and three of his officers.

Weldon's recollection contradicted Goodpaster's, as he was certain that the I-95 forms had been completed. He believed he had returned the INS copies in a batch to the inspections office at the New Orleans airport where they are routinely maintained. [However, INS has been unable to locate these records, suggesting that they may never have been completed, which is consistent with Goodpaster's recollection.]

Weldon and Goodpaster divided their inspection duties, with Goodpaster completing the INS Form I-259 (Notice to Detain, Deport, Remove or Present Aliens), which is usually prepared at the end of the inspection. [EXHIBIT #3] As a result, he signed the I-259 and entered the time. Weldon's part of the inspection was still ongoing. The I-259 form usually lists those individuals who have been detained on board. In this case, Goodpaster did not list each individual crewman, since he and Weldon saw only the officers who were paroled and were content in the knowledge that all others would remain on board.

Weldon and Goodpaster completed their inspection between 5:45 and 6:00 pm and left the ship without incident. They returned to shore via Port Ship Service launch (water taxi), which was used regularly by the shipping agent and Federal inspectors during the initial part of the Konev visit to New Orleans.

Upon returning to the INS inspections office, Goodpaster notified the communications operator at the Border Patrol station at Algiers, LA of the names of those individuals who had been denied entry into the US. [The Crewman Control Worksheet, completed by the Border Patrol Communications operator, indicates the actual time of completion for the report was 0804 hours on October 25, 1985.] [EXHIBIT #4]

Michael Flad left the ship between 7:00 and 8:00 pm, October 24, 1985, after all the various inspectors had completed their duties. As of that time, Miroslav Medvid, a ship's electrician, had not met nor come to the attention of any of the Americans who conducted business aboard the Konev that day.

2. THE SHIP JUMPER

Joseph Wyman operates the J&L Jewelry Store on Belle Chasse Highway, Belle Chasse, LA, at a point where that road parallels the Mississippi River, about 15 miles downstream from the city of New Orleans. Wyman's store is only a few hundred yards from the river and approximately 1 to 1-1/4 miles north of where the M/V Marshal Konev was anchored on October 24, 1985. [EXHIBIT #5]

Wyman gave a lengthy, detailed account of that evening's events to CSCE investigators. He remembered that the weather was clear and dry, and that darkness fell about 7:15 pm.

At approximately 7:30 pm, after eating dinner and watching "The Bill Cosby Show" on television, Wyman drove the short distance from his home back to his store, to secure the building for the evening. His nephew and employee, Wayne Wyman, was just leaving the parking lot of the shopping center [EXHIBIT #6] where the store is located. Wayne spotted his uncle's car and immediately turned around and followed his uncle back to the jewelry store.

As he drove, Wayne noticed a man hurriedly walking northward along the sidewalk located on the west side of Belle Chasse Highway. By the time Wayne turned his southbound vehicle around and drove the few blocks back to the shopping center, the man had crossed the street, heading towards the jewelry store.

Meanwhile, Joe Wyman had parked in front of his store, walked to the front door, and checked the lock and alarm system. He noticed the same man walking quickly across the street towards him and immediately became alert and wary of him. Wyman was concerned about potential robbers because of his jewelry business.

As Wayne drove into the center and stepped out of his car, the stranger ran up to him, waving his left hand and holding a small brown jar in his right hand. He spoke in a foreign language. Startled by the man, Wayne called to his uncle Joe for assistance.

Joe Wyman walked over to Wayne and attempted to communicate with the stranger. Joe had met Polish sailors while working as a Jefferson Parish Sheriff's Deputy in the late 1960's and his first thought was that the man was speaking Polish. At one point, however, Joe asked the man if he was Russian and the stranger pounded on his chest proudly, clearly stating that he was Ukrainian. Joe continued trying, unsuccessfully, to communicate with the stranger for what seemed to him like a half-hour. At times the man became so agitated and frustrated that Joe patted him on the shoulder to try to calm him down. The man kept glancing back in the direction from which he had just come, as if fearing he was being followed. Finally, trying to interpret some of the stranger's words and gestures, Joe asked him, "You, Policia? New Orleans?" The stranger smiled, nodded his head vigorously in assent, and seemed relieved.

Joe told Wayne he believed the stranger may have jumped ship. He felt the man knew something about New Orleans, and apparently was intent upon getting to the police there.

Wayne lived in Terrytown, a suburb between Belle Chasse and New Orleans. Since he was headed home, he offered to drive the stranger into New Orleans. Wayne told CSCE investigators that he felt sorry for the man, who seemed so lost and agitated, and wanted to help him in some way.

Joe recalled that when Wayne got into his car, the stranger seemed concerned, as if he feared they would leave him alone. He seemed very grateful, and literally leapt into Wayne's car, when Joe opened the door and gestured for him to get in. Joe told Wayne to drive the stranger to a police station in New Orleans. He watched as Wayne turned onto Belle Chasse Highway, headed north towards Terrytown and the bridge into the city. Joe remembered the entire parking lot encounter probably lasting about 30 to 40 minutes.

Wayne's recollection was at odds with Joe's on some points. He insisted that he, Joe and the stranger were only in the parking lot 5 to 10 minutes. Wayne also could not recall specific instructions to take the stranger to the police, but rather remembered feeling uncertain about where they were headed at that time.

Joe described the stranger as wearing a pullover shirt with blue and brown stripes, shorts and tennis shoes. He had dirty blonde hair, a short haircut, fair skin with pock marks and a round face. He had a bump on his chin, as opposed to a dimple. His eyebrows were arched and he had a thin, straight moustache. His hair was wet, but drying, and his clothes were wet, but not dripping. The man weighed about 175 lbs. and was roughly the same height as Joe, who is 5'11". The stranger was carrying a small jar, although he made no attempt to show its contents to the Wymans. The jar was about the size and color of a dark brown coffee creamer jar. [EXHIBIT #7]

Joe Wyman stated to CSCE investigators that after Wayne drove off, and as he was turning to go back to his shop, he noticed three men on the sidewalk across the highway at about a 45 degree angle from where he was standing. He noticed them partly because the shortest man had on a bright orange shirt, which seemed almost fluorescent. The short man was about 5'5" or 5'6" tall. The other two men were both about 6' or 6'1" tall. One appeared to weigh about 180 lbs. and the other about 200 lbs. One had a beard and one was clean shaven.

Joe checked to make certain the alarm system for his store was activated. When he turned around, he saw the three men had crossed the street and were walking toward him. He again became alert to the men and their activities. Joe said that he usually carries a gun to defend himself in the event of an attempted robbery, and he was armed on this occasion.

The short man walked over to Wyman and mumbled something, then asked in a clearer voice if Wyman had noticed anyone "wandering around." The man spoke without an accent and said that one of his "comrades" had fallen off their ship, possibly injuring himself. He asked if Wyman had seen anything unusual or noticed anyone looking for help. Wyman told the man that he had not seen anyone.

Joe said that he was immediately convinced that the three were searching for the stranger he had just sent off with Wayne. The word "comrades" made Joe think they were probably Russians. He decided then that the stranger's anxiety was probably a fear of being caught and returned to his ship.

According to Wyman, all three of "the searchers" were wearing civilian clothes, and the man with the orange shirt was wearing a windbreaker jacket. Wyman recalled that the two other men just watched while he was speaking to the shorter man. They were standing about 20 feet away during that conversation.

When the short man returned to his associates, they looked back in Joe's direction while talking amongst themselves. Then they crossed the street and walked down the sidewalk, returning southward in the direction from which they had come. After the unidentified men left, Wyman rechecked the door to his business and went home.

Meanwhile, Wayne Wyman and the young stranger drove along the Belle Chasse Highway toward New Orleans. On the way, the stranger spotted several street signs and shook his head, as if he was not finding what he was seeking. He became excited when he spotted signs that read "Mississippi River" and "New Orleans." Wayne heard him pronounce some of the street names and decided that the stranger could at least read some English.

When they reached the Oakwood Shopping Center near the bridge to New Orleans, the stranger spotted a police car and motioned for Wayne to stop. Wayne drove into the shopping center parking lot. The stranger seemed frustrated by his inability to communicate and motioned as if he wanted to write something. He spotted a used envelope on the back seat of Wayne's car and wrote on it the words "Novi Orleans," "policia," and "USSR." He handed the envelope to Wyman. [EXHIBIT #8] According to Wayne, it was at this point that he realized the stranger wanted to be taken to the police in New Orleans.

While still in the shopping center parking lot, the stranger opened the glass jar he had been carrying and took out an "official looking" piece of paper with a seal on it. He also had a watch in the jar, which he put on, and a small red container. He opened the container and Wayne noticed a strong menthol smell, deciding that the contents must be a salve or vapor rub. Wayne's passenger threw the red container out the window and tossed the empty jar into the back seat.

As Wayne drove across the Mississippi River Bridge into New Orleans, the stranger saw a Jefferson Parish Sheriff's Office patrol car and again became excited. Wayne tried to explain to him that was not what he wanted, and continued driving. Wayne believed the stranger specifically wanted to find the New Orleans Police Department.

Although Wayne lives just across the river from New Orleans, he maintained that he was not familiar with the downtown French Quarter district and became confused trying to locate the nearest police precinct station on Rampart Street. When he finally found the station house, the stranger was very excited. Wyman stopped in a "No Parking" zone, marked "For Police Only." The stranger took another discarded piece of paper from Wayne's car, stepped out of the car and appeared to write down Wyman's license plate number. Since there was no convenient place for him to park, and the stranger appeared to know what he wanted to do, Wayne left him at the station entrance and drove off, headed for home. [EXHIBIT #9]

3. THE POLICE ENCOUNTERS

a) The Rampart Street Station

Inside the 1st District Police Station, located at 517 North Rampart Street, New Orleans police officer Joseph Lainez was on duty as the desk officer. According to Lainez, a man came into the station house at about 8:00 to 8:30 pm on Thursday evening, October 24, 1985, and attempted to communicate with him in an unfamiliar language. The man appeared somewhat frustrated when Lainez failed to understand him.

Lainez described the man as clean shaven, with a short haircut (crew style) and blonde or light brown hair. He believed the man had a slight scar over his left eye and had blue eyes. He was wearing white cut-offs, or shorts, and his clothes did not appear to be wet. At one point, the man made a gesture, indicating to Lainez that he wished to use the toilet. Lainez allowed him to use the station facilities.

Lainez eventually called the New Orleans Harbor Police (HPD), because he felt the stranger might be from a foreign ship visiting New Orleans. He spoke with Corporal Willie George at HPD. That call was recorded at 2133 hours (9:33 pm) on the Harbor Police telephone line. [EXHIBIT #10] A tape recording was furnished to CSCE investigators, who produced the following verbatim transcript:

[OCTOBER 24, 1985 - 2133 HOURS]

EDDIE WASHINGTON: Harbor Police Department, Operator Washington.

JOSEPH LAINEZ: Yes. This is Lainez at the 1st District. I need to know if you havea . . . need to know if you have a ship tied in that's Polish.

WASHINGTON: Hold on could you? I'll get the desk sergeant.

LAINEZ: (Background) What? Don't you even know when I'm trying to help you?

WILLIE GEORGE: Corporal George. Can I help you?

LAINEZ: Yes, Lainez from the 1st district.

GEORGE: Yes, sir.

LAINEZ: OK, I got a guy here. He's either Polish or German. Do you have a Polish or German ship tied up?

GEORGE: No, we don't arrive them, but we arrive them by name. He should have his immigration card on him.

LAINEZ: He's got a little card. You called an immigration card?

GEORGE: Look on there and look down on the bottom right.

LAINEZ: It's just paper.

GEORGE: Tell him "immigration pass."

LAINEZ: Let me see, Goddamn you! He don't speak English . . . but he won't let me help. What's the name of your ship? What's the name of your ship?

GEORGE: Ask him for his immigration pass.

LAINEZ: He's got some pass, but he don't want me to take it. He don't want me to see it.

GEORGE: Is it a white card like?

LAINEZ: It's a paper with a . . . with a blue signature stamped on it.

GEORGE: Yes, that's it. OK, look down at the bottom right side of it and you're going to see the name of the vessel.

LAINEZ: (Background) OK, let me see your paper. Open your paper up. Open up. Open your paper! Now open your paper or you can get out. I'm not going to help you. Come on, open up. Open up your paper! I have to see your paper! Now open your paper! You see, he's kind of uncooperative.

GEORGE: Must think you're going to confiscate it. Most of the time if you tell them immigration pass, they'll let you see it.

LAINEZ: Let me see your immigration pass. Let me see your immigration pass! You let me see your pass or you can go! He's leaving.

GEORGE: OK, OK.

LAINEZ: Alright, Bye.

[END OF TRANSCRIPT]

About 10 minutes later, the man came back into the station and again tried to talk with him. Lainez said the man seemed lost and appeared anxious and distraught, with a look of frustration. Lainez asked the man if he was from a boat and again asked for his papers. The man pulled out his wallet and produced some papers, which bore words in a language he could not identify.

New Orleans police officer Bobby Jacobson told CSCE investigators that she was working overtime on the evening of October 24th, assisting with traffic control at the auditorium across the street from the Police Station. On her break that evening, she returned to the station. She overheard someone talking loudly and went out to the main station room to see what was happening. She found a man who kept saying something like "policia," which sounded to her somewhere between "Polish" and "police." The man appeared to be alone and seemed very frustrated trying to make himself understood by the other officer.

Officer Jacobson recalled that the man had a very short haircut, like a military cut or "skin head." The paper he had with him was not wet and he did not smell as if he had been swimming in the river. She described him as being slender and about 5'6" tall.

Jacobson asked the man if he was from a ship. He seemed to understand the word "ship" and said "yes" in English. She then asked if he had any papers, and picked up a piece of paper to indicate what she wanted. He apparently understood because he reached into his pocket and showed her a 3" x 5" card which she was unable to read because it was written in a foreign language. The card looked official. He took it back and refused to let her see it again.

At one point, the man pointed to a map, but it was only a map of the 1st district so it did not mean anything to Jacobson. She simply assumed that he was lost. She said that usually, when a seaman is lost, he has some idea where his ship is anchored and will try to identify it by pointing to that location on a map.

Officer Jacobson stated that the man said something that sounded to her like "Moscow," giving her the impression that he might be a Russian. She asked the desk officer, Officer Lainez, to call the Harbor Police and tell them they had a man at the station that may be from a ship, and also to find out if there was a Russian ship in the area.

Lainez again called to the Harbor Police and spoke with Corporal George. [EXHIBIT #11] The following conversation was transcribed by CSCE staff from Harbor Police tape recordings of that call:

[OCTOBER 24, 1985 - 2144 HOURS]

GEORGE: Harbor Police, Corporal George. Can I help you?

LAINEZ: Yes, this is Lainez from the 1st district again. OK, this guy came back. I looked in his papers. There is nothing in it in English at all. It's all in another kind of writing like Hebrew or Arabic or something. I can't make it out.

GEORGE: No shit

LAINEZ: Yeah. He says he comes off a boat.

GEORGE: Can he write it? Ask him can he write the name of his vessel.

LAINEZ: He can't write anything in English.

GEORGE: Oh shit man! I ain't never heard no shit like this! The name of the ship should normally be written on his immigration pass.

LAINEZ: It's not. Nothing in English. The only possibility I got is if I could get a call into . . .

GEORGE: Bring him over here and we can get immigration over here.

LAINEZ: OK! Thank you sir.

GEORGE: Alright.

[END OF TRANSCRIPT]

Lainez then called Correctional Officer Albert Macklin and requested that he transport the man to the HPD. According to Lainez, the stranger became "real nervous" and looked around wildly when Officer Macklin placed him in the police vehicle.

When interviewed by CSCE staff investigators, Officer Macklin stated that he remembered being called by his dispatcher to pick up a "10-6" (prisoner) at the station and transport him to the Harbor Police. Officer Macklin went into the station and spoke with Lainez, who said that the man he was to transport may have jumped from a ship, because his clothes were wet. Lainez said he had tried unsuccessfully to communicate with the man.

The suspected shipjumper was standing in the hallway during their conversation, pacing nervously back and forth, but was not handcuffed or restrained in any way. Officer Macklin, who is 6'6" tall, described the man as being 5'11" to 6'1" tall, with closely cropped hair and a muscular build. He had clear, taut skin, and looked very young.

As he was driving to the Harbor Police station, Macklin thought the man realized that he was near the river and became frightened, because he began beating on the glass of the paddy wagon. He kept saying something that Macklin did not understand and appeared to get more anxious. Finally, he settled down again.

Macklin recalled seeing two HPD officers when he arrived at their station. He asked them where he should take his passenger. He was also uncertain about how the man was going to behave and wanted the officers to wait until he got him inside the building. Macklin took the man upstairs and turned him over to Harbor Police Officer Kevin Newman. Also present at the Harbor Police office was the radio operator, Eddie Washington, acting desk sergeant Corporal Willie George, and Captain Patricia Majors. The total time Macklin spent with his passenger was probably less than ten minutes.

b) Harbor Police call in the Border Patrol

Once notified that the suspected shipjumper was being brought to the Harbor Police Station [EXHIBIT #12], the Harbor Police contacted the US Border Patrol and requested assistance in the matter. Border Patrol radio logs [EXHIBIT #13], maintained at the Algiers, LA, sector office, reflect a call received at 9:56 pm. The following transcript of that call was made by CSCE staff from Harbor Police tapes:

[OCTOBER 24, 1985 - 2154 HOURS]

TRACY GOODWIN: US Border Patrol.

GEORGE: Yeah, this is Corporal George over at the Harbor Police.

GOODWIN: Uh huh.

GEORGE: I just got a call from over the 1st district. They pulled out a seaman over there. They supposed to be on the road over to the Harbor Police. He's suppose to be off a ship. So I told them to get his immigration pass, and they said, that the only pass he had on him, he says it's wrote in Arabic or something. So they're supposed to be on their way over here with him. You got an agent that you can send over here?

GOODWIN: Yeah, OK. You're taking him to the headquarters?

GEORGE: Yeah, they're bringing him over to Harbor Police headquarters off Bienville Street. Alright?

GOODWIN: Alright, OK. Bye bye.

[END OF TRANSCRIPT]

At Harbor Police headquarters, the stranger again encountered a language barrier. Captain Patricia Majors was working the 11:00 pm to 7:00 am shift that night and had arrived early at the station. She was in the roll call room when she overheard officers attempting to converse with the man brought in by Officer Macklin. Willie George, Kevin Newman, and the radio operator were present as Majors entered the room. [EXHIBIT #14]

Majors told CSCE investigators that the officers were getting nowhere with their non-English speaking visitor. At one point, Newman drew several ships on the blackboard, trying to get him to write the name of his ship, but he apparently did not understand. The officers also pointed to their nameplates in an attempt to get him to identify himself by name, but all he did was laugh.

According to Majors, the stranger spoke words which sounded to her like French, German and maybe Russian. Clearly, in her opinion, he spoke several languages. His behavior was "erratic, almost manic," in Majors' words. One moment he would laugh, and the next moment he got angry.

The man's clothes appeared to be very clean and neat, not muddy or dirty, and he did not smell of the river. Majors observed that his clothes were not the type usually worn by seamen. They looked fairly expensive and well-fitting. He was wearing a white knit shirt with a symbol on it. She recalled that he was clean shaven, had a very muscular neck and well developed legs. He was about 5'11" and weighed about 170 lbs.

Majors thought that her friend Don McCann, who spoke several languages and was visiting New Orleans, might be able to solve the language problem. She called McCann. A tape recording of the ensuing conversation was obtained and transcribed by CSCE staff, as follows:

[Text in brackets is English translation of Ukrainian spoken by the seaman.]

[OCTOBER 24, 1985 - 2210 HOURS]

MCCANN: Hello, hello, hello.

MAJORS: We have a problem here. We have somebody that is supposed to be a seaman. We can't understand what language he's speaking. We want him to get . . . to write down the name of his ship. Or if he understands what we're saying. Or if he is a seaman, or what or who he is, and where, and the name of his ship. I'm going to let you talk to him and see if you can get anything out of him. OK?

MCCANN: OK.

MAJORS: I've got somebody on the phone. Talk to this person. Say "hello."

Seaman: Allo!

McCann: Yes.

Seaman: Ha.

McCann: Hello.

Seaman: Da [yes].

McCann: Uh, where are you from?

Seaman: Chisto? [Clearer!]

McCann: Where are you from? (Background noise.)

Seaman: Vse pravil'no. [It's alright.] (Background noise.)

Majors: What? (Background noise.)

Seaman: Poka [Until] . . . Perevodite [Translate.] Chto-to . . . ? [What is . . . ?]

McCann: [Repeats same word] Uh, ty parlo Italiano? [Do you speak Italian?]

Seaman: Ukrainesh. [I am Ukranian.]

McCann: Say it again.

Seaman: Da, ty by . . . sebe. [Yes, would you . . . yourself?]

McCann: Ah, Middle East?

Seaman: Ah?

McCann: Middle East?

Seaman: Chto-to Middle East? . . . po radio. [What is Middle East? . . . by radio.]

McCann: What vessel are you on?

Seaman: Anna.

McCann: Anna?

Seaman: Nyet. [No.]

McCann: Can you spell it?

Majors: Can you tell what he is speaking?

McCann: Uh, no, but it sounded Middle Eastern.

Majors: Dutch?

McCann: Not Dutch.

Majors: Not Dutch?

McCann: No, Middle Eastern. He's on the ship Anna.

Majors: On the ship Anna?

Seaman: Ah, on? [And him?]

Majors: The ship?

McCann: Vessel.

Majors: Vessel.

Seaman: (in background) Perovod, davay. [Let's translate.]

Seaman: Perevodchik, gde? [Where is a translator?]

McCann: Yeah, you are a sailor?

Seaman: Perevodchik nada. [We need a translator.]

McCann: Perevodchik nada? [Repeating the seaman's words.]

Seaman: Da, perevodchik. [Yes, a translator.]

McCann: Da, Perevodchik. [Repeating again.]

Seaman: Da. [Yes.]

McCann: Russkiy? [Russian?]

Seaman: Huh?

McCann: Russkiy? [Russian?]

Seaman: Ya? [Me?]

McCann: Eh, tovarishch? [Comrade.]

Seaman: (Laughter.) Russkiy . . . bystree. Tak bylo blionka . . . ? [Russian . . . faster. And so it could . . . ?]

Background voices: Don't hang up!

Seaman: Allo!

McCann: Yes.

Seaman: Davay. [Go ahead.]

Background voices: Don't, don't . . . (dial tone).

[END OF TRANSCRIPT]

At one point in the conversation, the seaman threw down the telephone. McCann, who does not speak Russian, told Majors that he thought the man was Russian, but Majors replied that she had already asked if he was Russian and he had said "no." McCann said that he thought the man's ship had two names, but the HPD was not able to identify any ship at that point.

While at the Harbor Police station, the seaman asked for a "globe," and picked up a motorcycle helmet. No globe was available, but Majors drew a large circle on a piece of paper and tried to get the seaman to draw on it, but he got mad and threw down the pen. Several times he ran back and forth to the stairs, acting as if he was going to run away, or perhaps wanted them to follow him. He seemed totally frustrated.

Corporal George called again to the Border Patrol to check on his request for an agent. That conversation was also recorded and a tape provided by Harbor Police to CSCE staff investigators, from which the following transcription was made:

[OCTOBER 24, 1985 - 2219 HOURS]

Goodwin: US Border Patrol.

George: Yeah, this is Corporal George, over at the harbor. Did you get in touch with one of your agents?

Goodwin: Yeah, I just now talked to them. They said it would be about 20 minutes. So they should be getting there any time.

George: OK, well we got him up here and he's a real doosey.

Goodwin: Oh yeah?

George: Right.

Goodwin: Bye. He should be there anytime.

George: Okay. Bye.

[END OF TRANSCRIPT]

4. BORDER PATROL PROCESSING

Border Patrol Agents Ernest Spurlock and Joseph Bashaw were working together at the bus station in New Orleans late on October 24, 1985, when they received a radio call requesting assistance at Harbor Police headquarters. Bashaw, the junior ranking of the two officers, left his car at the bus station and rode with Spurlock to the HPD station, located on the New Orleans riverfront wharf.

When they arrived at Harbor Police headquarters, they met a man, identified to them by HPD officers as a probable seaman from a foreign vessel. He was wearing shorts, a shirt and tennis shoes. He had a receding hairline with high cheekbones. He had a piece of paper in his possession on which appeared printing in an unfamiliar language, but no alien card or other papers useful in identifying him.

After a "pat-down" search, the Border Patrol agents escorted the man to their vehicle. Spurlock took Bashaw back to the bus station, where Bashaw retrieved his car and followed Spurlock by a few minutes, as he proceeded with his passenger to the Border Patrol Station across the river in Algiers.

Upon arrival at the Border Patrol Station at 10:48 pm, Spurlock and his passenger got out of the vehicle. According to Spurlock, the seaman took several steps towards the back of the building, as if he might run away. Spurlock called out and halted him, at about the time the seaman apparently spotted the chain link fence surrounding the Border Patrol compound. They went into the Border Patrol building without further sign of resistance from the seaman. [EXHIBIT #15]

After entering, the man gestured as if he wanted to use the toilet, but when Spurlock showed him the toilet facilities inside a holding cell (large cage), he changed his mind. Spurlock then led him into the processing room and told him to sit down. The man kept getting up, so Spurlock went over and pushed him back into his chair. Spurlock recalled that the man appeared calm one minute, but hyperactive the next. [Bashaw told CSCE investigators that when he arrived at the Border Patrol Station, Medvid was in the processing room with Spurlock, but was allowed to move around freely.]

Spurlock went into the next room, which is the office of the Patrol Agent in Charge, and got the "processing book," which is updated daily. This book contains records of alien crewmen listed as deserters, and information identifying the various shipping agents representing foreign vessels. It also contains a list of interpreters available through INS.

Spurlock recalled for CSCE investigators that someone at the Harbor Police Station had told him that they thought the seaman was Russian, so Spurlock showed him a world atlas. The seaman pointed to the Ukraine, a Republic within the Soviet Union, situated on the eastern border of Poland. Spurlock then telephoned Mrs. Magdalena "Martha" Jacobs, Supervisor of Interpreters, INS, New York District Office, to obtain authorization to use an interpreter.

Mrs. Jacobs told Spurlock that she did not have a Ukrainian interpreter available. Spurlock commented to Jacobs that Irene Padoch's name was listed as an Ukrainian interpreter on an outdated list in the processing book, and Jacobs told Spurlock that he could use Padoch if he could locate her. If Padoch was not available, he would have to wait until the next morning.

Spurlock telephoned Mrs. Padoch at her home in New York City. He identified himself, told her that he had a crewman in custody and needed her to interpret an interview for him.

According to both Spurlock and Padoch, there were mechanical problems with the telephone call. It was not a good connection and the speaker telephone was not working properly. As a result, Spurlock placed the seaman in a small interview room adjacent to the processing room, while he sat in the processing room in clear sight of the man on the other extension.

Padoch told CSCE investigators that she was unable to hear Spurlock, or the alien being interviewed, on several occasions. Consequently, she periodically asked if they were on the line. She confirmed that it was not a good connection, that there was a "whooshing" sound on the line, and that Spurlock spoke in a very low voice, causing her difficulty in hearing and understanding him. Spurlock also had some difficulty understanding Padoch because of her heavy accent and admitted that his southern drawl probably gave her problems.

When asked whether the call was recorded, Spurlock asserted that he was not required to do so and, even if he had been so inclined, he had no equipment available at that time. [Records and witnesses on this point confirmed that Border Patrol directives do not require such recordings.]

Padoch told CSCE investigators that when Spurlock asked her to speak to the seaman, she said, "Good evening. Do you speak Ukrainian?" and he answered, "Yes!" in Ukrainian. She asked if he understood her. He said, "Yes! At last! Somebody understands me!" He told her that she must come to New Orleans at once. She explained that she was in New York and that was very far away.

They conversed in Ukrainian throughout the entire telephone interview. The single Russian word that Medvid spoke, as Padoch recalled, was when he said, "Da!" meaning "Yes!" at one point in their long discussion. Spurlock told CSCE investigators that he asked Padoch to tell the man that if he wanted a lawyer, arrangements would be made, since it was a custodial interview. [Padoch denied being asked to advise the seaman of any rights, including the right to an attorney.]

Spurlock started asking for specific information, through Padoch, beginning with the young man's name. The seaman started to give his whole name, but then said only his first and middle name, "Miroslav Wasylowycz," (meaning Miroslav, the son of Wasyl, as is the practice in Slavic culture). He left out his last (family) name, as if he was hesitant to give it, so Padoch asked specifically for his last name and he replied "Medvid," which she recognized as Ukrainian. Spurlock also asked when Medvid was born, and Padoch remembered that Medvid started to say "Mertz," which sounded like the German word for March.

Spurlock asked how long Medvid had been ashore. Medvid said he could not remember exactly, but confirmed that he had come ashore that same day. Medvid asked Padoch, "Can't they see that I am still wet?" Spurlock asked when the police had caught him, and Medvid replied that the police had not caught him, but he had gone to the police on his own.

When asked for the name of his ship, Medvid replied "Konev," and when asked if he had a passport, he said that the ship's authorities had kept all the crewmen's passports. Spurlock asked where his ship was located and he answered "it is in this line," apparently referring to the Mississippi River levee, which is just across the road from the Border Patrol compound and visible from the Border Patrol offices. Spurlock said that Medvid had some papers with him which bore letters resembling "MIP," as if that was the beginning of an inscription. Medvid told Padoch it was "MIR" and that it stood for Marshal Konev, the name of his ship.

Spurlock asked if Medvid had seen any American inspectors on the ship and Medvid replied that he had jumped off the ship before the inspectors arrived. [Since few of the M/V Marshal Konev's crewmen were seen by any of the American inspectors, Medvid may not have been aware of their presence on the ship.]

Spurlock asked where Medvid had initially boarded his ship. He first said Greece, then corrected himself and said that he had boarded in Yugoslavia, at the port of Rijeka. The ship had then stopped in Greece, and eventually gone on to the United States. Medvid told Spurlock and Padoch that his job on the Konev was an electrician.

Spurlock continued seeking and noting background information. When Padoch asked what his father's name was, Medvid said, "I've told you my father's name already!" He said his mother's name was "Anna Lachowski," and she was Polish. Then he mentioned that he spoke Polish and suggested that if Padoch was having difficulty understanding him, he could speak to her in Polish.

Finally, Spurlock asked why Medvid had jumped ship. Medvid paused and thought for a long time, as if he knew it was a serious question. Padoch recalled his precise words: "Because I want to live in an honest country." Spurlock then probed for more specific reasons. At this point, Padoch deviated from her literal interpretation and began to ask if Medvid's reasons were based on politics, religion, or other matters. Medvid said that he could not give them the reasons now, that there was "not enough time to tell."

Spurlock and Padoch agreed that she was asked specifically to determine whether Medvid wished "political asylum." Spurlock told CSCE investigators that he explained to Padoch that he could not keep Medvid unless he asked for asylum. Padoch told CSCE investigators that she felt Medvid could not have understood Spurlock's question as stated, so she tried to explain it to him. She did not mention to Medvid all of Spurlock's comments, but did specifically ask Medvid if he wanted to stay here in the United States and whether he wanted political asylum. According to Padoch, Medvid answered without hesitation, "Nu, da!"(ph) meaning "Oh, Yes!"

Spurlock mumbled something that Padoch did not understand. She then spoke directly to Spurlock and said that Medvid was not very sophisticated and that he was a "a country boy" who did not really understand the phrase "political asylum." She said that in his own words, Medvid "wants to live in an honest country," but he does not know the magic formula, or the exact phrase to use.

Padoch told CSCE investigators that Spurlock asked her to repeat to Medvid the question about political asylum. She said Medvid again responded, "Nu, da! Da vie!" meaning "Oh, yes! Proceed!" and she clearly recalled telling Spurlock of that.

Spurlock refuted Padoch's statements, stating that he asked two or three times during the conversation whether Medvid wanted asylum, and that Padoch repeatedly said, "No, he just does not want to go back to the ship."

Spurlock recalled that his patience with Padoch was wearing thin because she was not giving him any explanation for Medvid's ship jumping. Padoch said that she finally she told him, "Well, put down political and moral reasons!" Spurlock confirmed that

Padoch had given him that phrase, and he said that he thought "political and moral reasons" were Padoch's words, not Medvid's.

Padoch insisted to CSCE investigators that when she asked Medvid if he wanted to stay in the United States for "political reasons," he answered, "Yes!" but claimed that he could not tell her all of the reasons. Medvid made no derogatory remarks about the USSR or his life there, but said that he "could not return." She admitted that the phrase "political and moral reasons" was her own and that Medvid never stated in specific words, "I want asylum." But she felt that her phrase was an accurate description of Medvid's desires and that Medvid did not have to use those precise words himself.

Bashaw said that there was "a lot of verbage" in the call to New York. He remembered that Spurlock was having difficulty understanding Padoch and kept repeating his questions. Spurlock agreed that he felt there was a lot of "irrelevant side talk" between Padoch and Medvid and he had to keep drawing her back to his questions and main issues. Bashaw commented that he did not hear Medvid speak any English.

Padoch explained to CSCE investigators that she, like Medvid, is from Lviv in the Western Ukraine near the Polish border, a fact which seemed to please Medvid. He seemed very happy to be speaking with her, but grew more anxious as the conversation continued. He kept insisting that time was critical and he could not go into more detail, as if he was afraid of something. This sense of urgency grew as the conversation continued. He became so impatient and excited near the end of the call that Spurlock asked Padoch to calm him down.

Spurlock finally told Padoch that he would have to arrest Medvid. This concerned Padoch because none of the INS agents had ever used the word "arrest" in their previous contacts regarding aliens. Medvid apparently understood the word "arrest" because he asked, "Why do they want to arrest me? I didn't do anything wrong!" Padoch recalled that Medvid's attitude changed dramatically at that point. Padoch said, "The word 'arrest' killed him!" He kept repeating "What will happen to me?" Then Spurlock explained to Padoch that he was going to take Medvid's fingerprints, which Medvid seemed to accept as necessary.

Spurlock again told Padoch to calm Medvid down and tell him that nobody would harm him. Spurlock asked Padoch if she would be available again later that night. She reminded him that it was already 1:00 am in New York, but he asked if she would be available around 3:00 am. She told Spurlock that she would, but was planning to leave town the next afternoon to go to her summer house, where she had no telephone. Spurlock told her that was OK. He did not explain why he thought he might have to call her again. Spurlock told CSCE investigators that he did not remember any intention or statement that he planned to call Padoch a second time.

At the end of the conversation, Padoch asked Spurlock for his name, which she wrote down in her notes. She said that he seemed displeased, so she explained that she needed the information in order to be paid by INS for her translation services. Padoch clearly remembers looking at the clock so that she could record the length of the call, because she is paid by the hour. The call lasted about 50-55 minutes.

After the phone call ended, Padoch went to bed but had a difficult time sleeping. She was uncomfortable with the way the conversation had gone, and was worried that the young Ukrainian, whose dilemna had deeply aroused her sympathy, would need lodging and other help. She mentally reviewed the names of her Ukrainian friends and acquaintances in Louisiana and finally decided to call Dr. Alexander Sas-Jaworsky, who is very well known in the US-Ukrainian community. She decided to ask him if she could give his name to the INS, in the event they needed local help with Medvid.

During the long telephone interview involving Spurlock, Padoch and Medvid, Bashaw had been attending to several tasks. He wrote down additional questions for Spurlock to ask Medvid. He also contacted the Border Patrol radio operator/dispatcher, Tracy Goodwin. Goodwin checked INS central records and identified the Konev's location and its US business agent.

Spurlock asserted during the interview that he ended the three-way conversation when he had enough information to complete INS Form I-213 (Record of Deportable Alien). He had not yet made his decision about Medvid's status or disposition. [EXHIBIT #16] Shortly thereafter, he instructed Bashaw to contact the shipping agent and arrange for Medvid's transportation back to the Konev.

CSCE investigators questioned both Spurlock and Bashaw extensively on the decision to return Medvid to Soviet control. Spurlock consistently and repeatly declared that Padoch told him clearly that Medvid simply feared returning to his ship, but did not desire asylum. Spurlock said he relied heavily on that key factor in making his decision.

Both Spurlock and Bashaw vehemently denied to CSCE investigators that any other person ordered them to return Medvid, or even spoke to them on the subject prior to Medvid's reboarding of the Konev. They denied placing or receiving any telephone calls (except as described above), regarding Medvid's processing or disposition.

[No conflict was discovered between this information and prior testimony or statements of Spurlock and Bashaw. Efforts of CSCE investigators to identify telephone records for all lines available to Border Patrol at that time and location were inconclusive. Both Federal and AT&T officials reported that no records of value to this investigation now exist, and probably were not available six months after the date in question.]

Bashaw recalled that neither he nor Spurlock saw any reason to call for an INS asylum officer, since they did not believe Medvid was seeking asylum. Spurlock also argued that he had not felt any need to contact any superior for advice in his Medvid decision since he believed, after considering Padoch's information, that Medvid was "just another ship-jumper." Both Spurlock and Bashaw denied being aware at that time of INS regulations requiring Soviet aliens to be accorded "immediate action" case status.

At Spurlock's direction, Bashaw contacted Thomas Richard, of Universal Shipping Agencies, Inc., and requested that someone from USA return Medvid to his ship.

Spurlock photographed and fingerprinted Medvid [EXHIBITS #17 and #18], while waiting for the USA agent to arrive. Mike Flad, the USA agent, and Timothy Maloz, who transports people and goods to and from ships for USA, arrived around 1:00 am to pick Medvid up.

CSCE investigators learned from Spurlock that he and Bashaw turned Medvid over to Flad and Maloz and then remained at the Border Patrol office for about 45 minutes to an hour. Bashaw completed the "morning report" (a summary of aliens apprehended each day), as their supervisor had requested earlier. Meanwhile, Bashaw typed out the INS Form I-259 ordering Medvid's return to his ship [EXHIBIT #19], and Spurlock completed the top portion of Medvid's fingerprint card. They completed their work and left the office about 2:00 am on October 25, 1985.

5. INVOLUNTARY REPATRIATION

Sometime between 11:30 pm and midnight on October 24, Thomas M. Richard, Operations Manager for Universal Shipping Agencies, Inc., received a telephone call from Border Patrol agent Bashaw. Richard said that he was told to arrange for transportation of a Soviet seaman, in custody at the Border Patrol Station in Algiers to his ship, the M/V Marshal Konev. Richard knew the Konev was currently anchored near New Orleans, and had contracted the services of his firm as its agent to conduct its business in the United States.

Richard advised CSCE staff investigators that the ship was a Soviet flag vessel and "it was not normal policy" to return Soviet seamen to their ship. According to Richard, he advised the Border Patrol agent that he believed it was a mistake to take the seaman back to the Konev, but the agent said he was sending the seaman back anyway.

Richard said he specifically suggested that the Border Patrol agent check with his supervisor, but Bashaw told him that the seaman "wanted to return to his ship" and that an INS form I-259, ordering the shipping agent to return the seaman to the ship, would be issued. Richard knew that failure to comply with an I-259 order would subject his firm to a fine of $1,000, so he decided to obey the order.

Richard contacted Timothy Maloz, of General Maritime Transportation Service, Inc., a subcontractor to USA which supplies transportation services to ships in port. At the time, Maloz was sharing an apartment with USA employee Mike Flad (the agent assigned to the M/V Marshal Konev for USA). After Richard spoke with Maloz and told him to pick up Medvid and return him to the ship, he also spoke with Flad and instructed him to accompany Maloz.

When Flad and Maloz arrived at the Border Patrol Station in Algiers, LA, they met Medvid there, in the custody of Border Patrol agents Spurlock and Bashaw. Flad was given the INS Form I-259 and asked to sign it, which he did. According to Flad, he asked the Border Patrol agents if they were certain that Medvid wanted to go back to his ship. The agents told him that they had spoken with an interpreter and, based upon her translation, had decided that

Medvid should go back to his ship. Medvid was sitting in a chair, smiling, while this exchange occurred. Maloz recalled thinking that Medvid probably had no idea where he was headed. Flad recalled that Medvid went to the toilet and then they departed in Maloz's van for the ship.

Patrol agent Bashaw told CSCE investigators that he remembers telling Flad to call back to the Border Patrol if he and Maloz had any problems with Medvid, because Bashaw and Spurlock planned to be at the station for a while longer. Spurlock told Flad that Medvid had been acting "skittish" and had tried to run from him. Although Medvid was not then handcuffed and seemed under control, Bashaw gave Flad a set of "flex cuffs" (plastic handcuffs), in case they were needed.

Medvid shook hands with Spurlock, kissed his hand and climbed into the van. According to Bashaw, this occurred about 12:45 am on Friday, October 25. Bashaw and Spurlock remained at the station for approximately one hour, completing their paperwork.

Flad and Maloz denied to CSCE investigators that they were asked by the Border Patrol agents to call or to let them know if anything unusual happened. Flad noted that the Border Patrol station is usually closed between 12:00 midnight and 4:00 am, and it was after midnight when Flad and Maloz picked up Medvid.

On the way to Belle Chasse, Medvid sat in the center of the second seat of the van, while Maloz drove and Flad sat in the right front seat. When the stacks of the M/V Marshal Konev became visible from the roadway, above the levee, Medvid became somewhat excited. He leaned forward and began talking very fast, pointing to the Konev's stacks. Flad gently pushed Medvid back into the seat and he remained calm for the remainder of the ride.

When they arrived at the office of their contract water taxi service, Port Ship Service (PSS) which is on the river bank at the Belle Chasse Anchorage area, Medvid got out of the van and walked with Flad and Maloz to the office, offering no resistance.

Raymond Guthrie, a boat operator (launch pilot) for PSS, discussed his recollections of that night with CSCE staff investigators. He recalled receiving a telephone call from Mike Flad about midnight on October 24, 1985. Flad told him that he needed Guthrie to return a Soviet seaman to the Marshal Konev. A short time later, Flad arrived with the seaman and a man whom Guthrie believed to be another employee of the shipping agency.

All three men entered the dockside office of Port Ship Services after midnight. The ship was anchored upriver, less than a mile, and clearly visible, from the PSS dock. [EXHIBIT #20] Guthrie described the seaman as a young man in his early twenties, wearing shorts. Guthrie could no longer recall what the crewman looked like, but remembered that he poured himself a cup of coffee while Guthrie and Flad were talking.

At one point, the seaman drew his finger across his throat, in a throat-cutting gesture, indicating to Guthrie that he knew he was in trouble, and Guthrie laughed. Guthrie noted that the seaman was not handcuffed nor was he resisting. He seemed nervous, but not especially frightened.

Guthrie further recalled that he transported the seaman, the shipping agent and the third man (Maloz) out to the M/V Marshal

Konev without incident. He said that Soviet ships usually have a guard on duty, so there was no need to call ahead to the ship. He blew his horn as they approached and within a few minutes someone lowered the gangway. Flad stood on the stern of the launch. Guthrie was outside, steering the boat from the flying bridge. Maloz was inside the small wheelhouse with Medvid. [EXHIBIT #21]

According to Flad, the second mate on the Konev saw the launch approaching the ship and recognized Flad. The mate lowered the gangway and climbed down to the launch, where he held a brief conversation with Flad. The mate was surprised to see Flad at that time of the morning and was "shocked" to see Medvid aboard the boat.

Guthrie moved to the back of the launch in an effort to keep it next to the ship. Maloz motioned to Medvid, then gently guided him to the stern of the launch, near the gangway. Medvid did not resist, but seemed reluctant when he saw the second mate.

Maloz recalled that the Soviet mate began speaking to Medvid in a foreign language. After a few words, Medvid started screaming and "shaking like a leaf." The mate came over to Medvid and tried to nudge him onto the gangway, leading him "like a little child," but Medvid clung fiercely to the launch railing and refused to go further.

After a minute or two, Medvid seemed to relax and let go of the railing. Then he suddenly jumped off the launch into the river and began swimming for shore.

Guthrie attempted to pull the launch between Medvid and the shoreline, but he swam around it. [Maloz recalled that Medvid swam under the launch and that he repeatedly refused to grab the life ring that Maloz threw to him.] The river was low and the water was not particularly rough. Guthrie allowed Medvid to continue swimming to shore without interference because he did not want to take the chance of drowning him in the swells caused by the launch. Flad stated that the current in the river was not strong that evening and the mud on the riverbank was soft because of waves from passing ships.

Medvid swam the fifty or so yards to shore and climbed onto the large boulders, called "rip-rap," at the waterline. Guthrie guided the launch to shore at about the same time Medvid climbed out of the water. The Soviet mate had remained on the launch and he jumped onto the shore after Medvid, who moved slowly and appeared lethargic after his swim. The mate tackled Medvid a few yards beyond the rocks, on the grassy area of the river bank. Flad and Maloz followed the mate to shore and assisted in overpowering Medvid, who was struggling to get free. Maloz held Medvid's legs while the mate held his shoulders.

Maloz recalled those moments. He said Medvid was kicking and screaming, while lying on his back and "banging his head backwards onto the ground." The ground there was sandy soil, with no rocks, but the mate moved Medvid to a softer, muddy area and held his head down to prevent him from hurting himself. [EXHIBIT #22]

Medvid finally seemed to grow tired and began sobbing uncontrollably. He screamed and shouted in a foreign language, repeating many times a word which sounded to Maloz like "rockne" (suggested by one translator as possibly a Russian word, "proklyatiy," meaning "you s.o.b.")

Guthrie remained inside the pilot house of the launch, directing a spotlight at the men on shore. He confirmed that Medvid resisted capture and struggled with the three other men. From Guthrie's perspective on board the launch, the scuffle appeared to take place along the grassy bank, just above the artificial shoreline of boulders (rip-rap).

Flad agreed that Medvid was tackled on the grassy part of the levee and this is where the real struggle took place. Flad said that he never saw any bruises or cuts on Medvid, and that Medvid banged the back of his head on the muddy shore.

After Medvid had been subdued, Maloz and the Soviet mate stayed on shore while Flad returned to the launch and instructed Guthrie to get help from the ship. Once at the Konev, Guthrie waved to several Soviet seamen who had gathered on deck, beckoning them to get into the launch. About six or seven men came aboard and were taken back to shore, where they literally picked Medvid up and carried him onto the launch.

Maloz remembered that Medvid lay on the launch deck, exhausted and crying, but no longer fighting. Maloz heard a strange noise or gurgling sound coming from Medvid and thought that Medvid was choking, or perhaps swallowing his tongue. The Soviet mate rolled Medvid onto his stomach, which seemed to stop the choking sound. At that point Medvid stopped struggling and ceased all resistance.

Guthrie told CSCE investigators that he watched the seamen carry Medvid to the stern of the launch. He does not recall seeing any blood on Medvid, nor did he later find any traces of blood on the launch. He did not see any cuts or abrasions on Medvid but admitted that he did not have a clear view, due to the darkness and the number of men gathered around Medvid. Guthrie did remember that Medvid was yelling as he was carried onto the launch. After Guthrie piloted the launch back to the Konev, the Soviet crewmen carried Medvid up the gangway with Medvid again resisting somewhat.

According to Flad, Medvid was returned to his ship at about 1:30 to 2:00 am. Guthrie, Flad, and especially Maloz, expressed to CSCE investigators sympathy for Medvid. Maloz said that during the struggle and return to the ship, he was "heartsick" over what was happening. He felt very depressed about his part in forcing Medvid back to his ship.

6. THE DISCLOSURE

At approximately 2:00 am on October 25, 1985, Jack Rasmussen, Assistant District Director for Examinations, INS, was on the Port Ship Service company dock at Arabi, LA, awaiting a US Customs officer, who was to accompany him on a joint inspection of a newly arrived ship. While waiting, Rasmussen overhead a conversation in the radio room concerning a "Russian seaman" who had been forcibly put back on his ship, after a violent struggle.

Rasmussen recounted for CSCE investigators how he began inquiring for further details. He learned that the ship's US agent had been at the scene. However, the men in the PSS office became nervous and hesitant at his questioning and he got no more information from them.

Rasmussen remembered that he first thought a sailor had been shanghaied. Since it was late and no one wanted to talk further about the alleged incident, he decided that he would get more facts when he arrived at his office first thing that morning, only six or seven hours away. He knew that if the ship attempted to depart from New Orleans without authorization, it would take a minimum of six hours to reach the mouth of the river and open waters. Therefore, he felt it was not critical that he act upon the rumor before the start of business later that morning.

a) INS receives additional information

At approximately 7:00 to 7:15 am that morning, Ron Parra, the INS Deputy District Director and Rasmussen's boss, arrived at his office in New Orleans. Normally, Parra and Rasmussen shared a ride to work, but since Rasmussen had been out most of the night on an inspection, he arrived a little later on this date. Shortly after arriving, Rasmussen came into Parra's office and informed him of the "dock talk" about the "Russian sailor." Parra and Rasmussen had a closed door discussion about what to do and decided to keep the matter confidential until they could get more information. Rasmussen began checking on Soviet vessels in the area.

Meanwhile, across the river in Algiers, Assistant Chief Patrol Agent Warren C. Goodwin arrived at the Border Patrol Sector headquarters. He reviewed the duty report which indicated that one Miroslav Medvid, listed as a "D-1 Crewman," had been "apprehended and processed" during the previous night. Goodwin was unable to locate the accompanying reports with details of the incident, and the brief listing on the duty report contained insufficient data to alert Goodwin to the unusual nature of that "apprehension."

Across the yard at the patrol station, Border Patrol agent David Vannett discovered that his supervisor, Eric Weldon (Patrol Agent in Charge) was on sick leave. Weldon had left a note requesting that Vannett call Goodwin at the sector office and give him the morning report. Vannett reviewed the report which Bashaw had prepared the previous evening, then contacted Goodwin and provided him with the necessary information. [That report contained only brief information, listing highlights of daily apprehensions, and its readers were unaware of the real significance of the Medvid "apprehension."]

While Vannett was on the telephone with Goodwin, Border Patrol agent Kevin McDonald came into the office. McDonald checked the apprehension log to see what had happened on the evening shift. He noticed Medvid's A-file (Alien file) on Weldon's desk, picked it up and began looking at it. McDonald remarked to Vannett that Spurlock and Bashaw had returned a "Russian seaman" to his ship.

McDonald recalled for CSCE investigators that he took the A-file and several unrelated papers, intending to deliver them later in the morning to the District Office. About 8:15 am, he arrived at the District Office with the Sector files, delivered them to the records center, and left the office to return to his regular duties. [Interoffice reports and communications are routinely hand delivered between the INS district office and the Border Patrol station in this fashion.]

Meanwhile, Rasmussen telephoned Ray Bond, supervisor at the INS airport office, which coordinates all INS inspections (maritime, aviation, etc.) for the area. David Vannett overheard Bond talking with Rasmussen about a "Russian ship jumper." Remembering McDonald's comment, and report entries he had just seen at the Border Patrol offices, Vannett got on the line with Rasmussen. Rasmussen told him of his effort to further identify an alleged incident the previous night, involving a "Russian seaman who had been taken back to his ship kicking and screaming."

Vannett told Rasmussen that apparently a "Russian sailor" had been apprehended the night before and the file he sought should be on Weldon's desk. (Vannett was unaware that McDonald had taken the files to the district office.) Rasmussen told Vannett he would get in touch with Chief Border Patrol Agent Jesse Tabor at sector headquarters regarding the matter.

Rasmussen shared that information with Parra, who then called Chief Tabor. Parra said that Tabor did not believe that his officers would have beaten any crewman or forcibly returned him to his ship. Tabor promised to find out what had happened and get back in touch with Parra. [EXHIBIT #23] Tabor called Spurlock about 10 am and inquired as to the whereabouts of the paperwork on the case he had processed the previous evening. Spurlock told Tabor that the file had been placed on PAC Weldon's desk.

At the Border Patrol Sector Office, Tabor requested information from Goodwin, who again tried to locate the Medvid paperwork. The brief log and report entries, which mentioned the Border Patrol agents' contact with the seaman, was all Goodwin could locate at that time. He knew there should be more paperwork, but could not locate either the alien file or the Sector copy of the Form I-213.

According to Parra, Tabor called back a short time later and advised that Spurlock and Bashaw had been on duty the previous evening. They had reported taking a Soviet crewman into custody and putting him back on board his ship, but "no problems had been reported." Tabor told Parra that his information indicated that the crewman had jumped ship and "did not want to go back," but had not requested asylum and "nothing unusual was noted about the case." Since the sailor had apparently not been "shanghaied," as Rasmussen had originally suspected, he did not question the matter further at that time.

b) Padoch requests assistance

Meanwhile, in New York that Friday morning, Dr. Irene Padoch was waiting for a follow-up telephone call from Border Patrol agent Ernest Spurlock. Padoch related to CSCE investigators how she became increasingly concerned about the Ukrainian boy and decided she must try to help him somehow.

When she had not received a call by 10:30 am (9:30 am, New Orleans time), Padoch called Dr. Alexander Sas-Jaworsky in Abbeville, LA. She told Dr. Sas-Jaworsky the basic story about a Ukrainian boy who was at the Border Patrol office, under arrest, and who wanted to defect. She thought that he might need someone who could speak his language, a place to stay, and other assistance.

CSCE investigators developed additional information in an interview with Sas-Jaworsky, who revealed that Padoch told him that she had called him in confidence. She told him that the Ukrainian boy wanted "to be a free man," and that he "wants to be an American." According to Mrs. Sas-Jaworsky, who was on an extension telephone during the call, Padoch stated that the crewman, whom she did not identify by name, had asked why he was "in prison," and that Padoch had explained to him that he was merely being detained.

Dr. Sas-Jaworsky agreed to help and told Padoch that his friend Jerome Kurpel, who spoke perfect Ukrainian, lived even closer to New Orleans. He said that Kurpel could assist INS if necessary. Padoch told Sas-Jaworsky not to take any immediate action. She explained that she was going away for the weekend and wanted to alert the Border Patrol, in case they needed an interpreter. Sas-Jaworsky told Padoch that she could give his name and telephone number to the Border Patrol.

In spite of Padoch's instructions, Sas-Jaworsky's concern about the seaman increased to a point at which he contacted the INS anyway. He reached Rasmussen by telephone and told him that he understood the INS had apprehended a Ukrainian defector from a ship. This prompted an immediate questioning by Rasmussen about how he knew this information, but Sas-Jaworsky refused to reveal his source.

When Sas-Jaworksy was unable to find out anything definite from INS, he contacted several of his influential friends in the New Orleans area for assistance. He also contacted Congresswoman Lindy Boggs' office, seeking their help.

Martha Jacobs, Padoch's INS supervisor in New York, had also told agent Spurlock to call her back on October 25th, if he was able to reach Padoch for the Medvid interview. Jacobs wanted to record the time used in the translation for payroll records from which Padoch would be paid.

Jacobs stated to CSCE investigators that Spurlock never called, so she assumed that the agents had not reached Padoch. But she learned otherwise when Padoch herself called Jacobs that Friday. Jacobs recalled that Padoch was very anxious about the Ukrainian sailor. Padoch told her that Medvid was still in wet clothes at the time of the telephone interview. She also told Jacobs that she believed the matter would probably come under INS jurisdiction, because Medvid had asked for political asylum.

Padoch expressed concern that another interpreter might be needed, since she was not going to be available over the weekend. Jacobs told Padoch not to worry because she would find someone else, if needed. Padoch told Jacobs that Dr. Sas-Jaworsky could help, if INS needed an interpreter in New Orleans. [Jacobs told investigators that she thought Padoch also told her she gave Sas-

Jaworsky's name to Spurlock, but this conflicts with statements of both Padoch and Spurlock.]

At about 2 pm that Friday, Sas-Jaworsky called Padoch and revealed that he had called the INS about the Ukrainian sailor. He explained to her how the INS had asked where he got his information, and he had finally given them Padoch's name. Sas-Jaworsky told Padoch he had also called Congressman John Breaux's office and his wife had called the Congressman's wife.

CSCE investigators learned from Padoch that she was furious with Sas-Jaworsky, who had completely disregarded her careful instructions. She was so angry that she put down the phone and let Sas-Jaworsky talk to her husband. Later that afternoon, Padoch and her husband left New York City for their summer home, as scheduled.

c) INS discovers its problem

Around midday in New Orleans, an apparently Eastern European gentleman named Jerome Kurpel came into the INS district office. Through the open doors, Rasmussen overheard Kurpel inquiring about "the Ukrainian boy," and asking why he was in jail.

Rasmussen suspected that "the boy" might be the seaman involved in the previous evening's incident, so he went out to speak with Kurpel.

Kurpel was under the impression that the Ukrainian crewman was in jail and that he wanted to stay in the United States. Kurpel told Rasmussen that Sas-Jaworsky was the source of his information, and Sas-Jaworsky had learned about the matter from someone in New York. Rasmussen told Parra of this new development and Parra immediately instructed Tabor to begin a formal inquiry into the matter.

Rasmussen called the Sas-Jaworsky residence. When Mrs. Sas-Jaworsky answered the telephone, she asked Rasmussen the same questions that Kurpel had asked. Rasmussen said that she would not, or could not, tell him the name of the seaman, the name of the ship or the source of her information. Although Padoch's name was mentioned, her relationship to the case and her association with the Sas-Jaworsky's was still unclear to Rasmussen.

In the meantime, Goodwin had learned that a "pile of paperwork" had been taken to the Border Patrol District Office that morning and it was possible the Medvid paperwork had inadvertantly gone with it. This information was passed on to Rasmussen, who eventually located Medvid's file among some other files in the INS records center. As he walked back to Parra's office, Rasmussen began reading the Form I-213, which noted that the seaman had jumped from his ship for "political and moral reasons." The form also identified Irene Padoch as the interpreter in the incident.

Rasmussen returned to Parra's office with the file and said, "We've got problems!" Parra, too, noted that paragraph three of the I-213 indicated that Medvid had jumped ship for "political and moral reasons," which to him meant that Medvid was seeking asylum.

Parra instructed Rasmussen to take charge of the file and insisted that it be held at the INS District Office. The file contained four identical prints of a Polaroid exposure of Medvid (known as a "mug shot"); an unsigned fingerprint card; and the INS forms I-213 and I-259, completed by Spurlock and Bashaw.

Parra attempted to alert his superiors at the INS Regional Office in Dallas, and at the Washington, DC headquarters, known as "Central Office." He had difficulty reaching the appropriate officials initially, because it was then lunch time. Tabor also began trying to contact his Border Patrol supervisors about the potential problems.

Parra eventually reached Ray Kisor, Associate Commissioner for Enforcement, at INS Central Office in Washington, and briefed him on the situation. Parra then recontacted Tabor, who told him that the Regional Commissioner had suggested boarding the ship and removing the seaman for questioning. Tabor said he had already decided to send Deputy Chief Patrol Agent Bill Worley and Ernest Spurlock out to the ship. Parra agreed to send an INS asylum officer named Charles Shepler with them.

At about 3:30 pm (2:30 pm, New Orleans time), INS Central Office called Laura Dietrich, Deputy Assistant Secretary of State, Human Rights and Humanitarian Affairs Bureau, who has primary responsibility for all DOS asylum matters. Dietrich learned about the INS problem and decision to get Medvid back from the Soviet ship. She was dumbfounded, and asked how the incident could have happened. Her INS caller expressed his own chagrin and said that the Border Patrol agent involved had been sent to the ship with orders to get Medvid back.

Dietrich told CSCE investigators that in more that three years, handling about 25,000 asylum cases per year, she had not once dealt with a situation like the Medvid case, wherein the potential asylee was back in the custody of his government. This effectively precluded the normal interview by INS and made the Medvid situation one of "bilateral negotiation" for the Soviet Affairs office of DOS to handle.

At about 3:40 pm on Friday, October 25, 1985, INS notified the Soviet Desk (Office of Soviet Union Affairs), Department of State, of the circumstances of the Medvid case.

7. REACTION OF US OFFICIALS

a) Border Patrol Agents board the Konev

William Worley, Chief Deputy Patrol Agent at the Border Patrol's New Orleans sector office in Algiers, LA, first learned of the Medvid incident when he was called into Chief Tabor's office on Friday, October 25 at about 1:30 pm. Tabor was on the telephone with Ed O'Connor, the INS Regional Commissioner in Dallas. O'Connor gave instructions for Worley to take Medvid off the ship for further questioning. [EXHIBIT #24] Agent Spurlock had already been notified to come into the office, so that he could accompany Worley to the M/V Marshal Konev to identify Medvid. INS instructions also included a firm policy of "no statements" about the situation until more information could be developed.

At about 2:30 pm, Worley and Vannett met Spurlock as he arrived at Sector headquarters. The three proceeded to the Belle Chasse launch site where they took a launch to and boarded the M/V Marshal Konev. The agents were escorted by a Soviet officer from the gangway to the Captain's stateroom. Worley got the distinct impression that most of the crew was asleep, even though it was mid-afternoon.

After a short wait, Captain Tkachenko, Aleksandr Kolodenko (Chief Engineer, Political Officer and suspected KGB agent), and the ship's purser met with Worley, Vannett and Spurlock. Worley asked to see Medvid's passport, stating that there were some problems with paperwork which needed to be cleared up. The Captain produced the passport and Spurlock identified the photograph thereon to Worley, as the seaman he had encountered and ordered sent back to the Konev the previous night.

Worley told the Captain that he needed to speak with Medvid, but was told that Medvid was not available because he had been sedated and was in restraints. The Captain explained that when he first returned to the ship, Medvid was "irrational" and had to be confined to a room with another seaman watching over him. Tkachenko told Worley that, at breakfast time, the crewman left the room to get food for himself and Medvid, but heard a noise and an outcry which sent him back to check on Medvid. He found Medvid with a cut on his arm, apparently self-inflicted from pieces of a broken light bulb. Medvid was then moved into the ship's infirmary.

Worley immediately suggested that he take Medvid to a medical facility on shore, but Captain Tkachenko declined, explaining that the ship's surgeon/anesthetist could handle the matter. Then Worley repeated his request to see Medvid. The Captain consented and all present went to the infirmary, except for Vannett who remained in the Captain's stateroom.

According to Worley, the infirmary was a small single room containing only a bunk and one chair. The bunk had been pulled away from the wall at one end, apparently to allow access to the cloth restraints which bound Medvid's wrists and feet. The Soviet doctor was either in the room or entered shortly after the group arrived, possibly through a second doorway at one end of the room.

Medvid was lying face up on the bunk, partially covered with a sheet, and seemed to be sleeping or unconscious. His arms and feet protruded from under the sheet, and were tied with towels. His left arm was bandaged from the hand to above the elbow, and he was shirtless, exposing a strong upper torso which Worley felt indicated a man in good physical condition. He had a ruddy complexion.

Worley stood a few feet from Medvid, in the doorway, looking at Medvid's left side. Spurlock moved closer, standing at Medvid's feet. Spurlock identified the man on the bunk as the same man he had processed and sent back to the Konev a few hours earlier.

b) Soviet cooperation changes to resistance

Since it was apparent they would not be allowed to remove Medvid in his current condition, Worley stepped back into the hallway and spoke with the Captain and Kolodenko, telling them that he was going to station an agent in the infirmary with Medvid. The Captain offered no objection, but Kolodenko became agitated and "stomped off" down the passageway. He turned for a moment and muttered to the Captain something which Worley could not understand.

The Captain advised Worley that he was going ashore to contact the Soviet Embassy in Washington. With Spurlock stationed in the sickbay, Worley called a launch for the Captain and briefed Chief Tabor on the situation via his portable radio.

While the Captain was absent, Worley and Vannett waited in the Captain's stateroom with the ship's purser and steward. After about an hour, Vannett replaced Spurlock in the infirmary. According to Vannett, Medvid had not yet regained consciousness. Spurlock then joined Worley in the stateroom.

Once it was determined that Worley, Spurlock and Vannett would remain on board, Border Patrol Agents Kevin McDonald and David Blackwell were instructed to set up surveillance of the Konev from the Belle Chasse launch site, a few hundred yards upriver and well within sight of the ship.

Nearly two hours passed before the Captain returned to the ship. Worley was just getting ready to send Spurlock to relieve Vannett in the infirmary when the Captain reappeared, obviously distraught and no longer speaking in English. Kolodenko translated for the Captain, who instructed Worley to remove his agent from the infirmary and leave the ship immediately, as ordered by his Embassy. Worley refused to leave the ship, but agreed to recall Vannett from the infirmary. He sent Spurlock to get Vannett. It was agreed that there would be no more conversation on the matter until Soviet Embassy officials arrived from Washington, DC.

The Captain continued to berate Worley, claiming that there was no reason for him to stay on board the ship, but Worley refused to leave. Although the Soviets remained reasonably cordial, they demanded the agents relocate to the officers' wardroom, two decks below the Captain's cabin and one deck below the infirmary, on the opposite side of the ship. The agents were also told not to roam around the ship.

According to Worley, Spurlock left the ship soon after retrieving Vannett from the infirmary, to return to Sector Headquarters and explain his role in the incident. Since Spurlock had identified Medvid to both Worley and Vannett, Worley had no further concerns about Medvid's identity.

Despite the Captain's instructions not to roam around, Worley attempted to move about the ship as much as possible, to learn its layout. Although he was repeatedly caught by crewmembers, these episodes never resulted in a confrontation.

c) INS and Border Patrol coordination

INS and Border Patrol activity was generally coordinated from both the Regional and Central Offices. For logistical purposes, however, a command center was established at the Border Patrol Sector Headquarters, located in Algiers, LA, approximately halfway between the City of New Orleans and the Belle Chasse anchorage. Since Border Patrol Agents were involved in the initial incident, the case was generally viewed as a Border Patrol operation. However, from all indications, the INS district office fully supported the Border Patrol throughout the entire affair.

During the initial reaction period, Deputy District Director Parra assembled a number of INS agents to await further instructions from the Regional and Central Offices and to provide support to Chief Tabor as needed.

About 2:00 pm, Charles Shepler, an Immigration Examiner (asylum officer) for INS, was called into Parra's office to attend a conference concerning the Medvid incident. He learned that the INS Regional and Central Offices had been notified, as well as the State Department. Shepler was instructed to board the Konev and remain on board until a solution to the Medvid problem could be found. He was told that he was "in charge" and was given an INS form ordering the Captain of the ship not to remove Medvid. [EXHIBIT #25]

In an interview with CSCE investigators, Parra indicated that he was concerned about a possible switch of someone else for the real Medvid. To preclude that possibility, Parra issued instructions that Shepler be furnished a copy of one of the four Border Patrol photographs (mug shots) of Medvid, a copy of the I-213, and a copy of the fingerprint card, all to assist him in making a positive identification of Medvid. Shepler was also told to take a portable fingerprint kit to take prints of Medvid and compare them with those on the original fingerprint card executed by Spurlock. [When interviewed by CSCE staff, Shepler stated that he does not recall receiving instructions to verify Medvid's identity through fingerprint identification.] He was also told to take along a portable radio for direct communication with others on shore.

By 4:00 pm, additional INS personnel had assembled in the District Office. Parra instructed Rasmussen to begin a log of activities [EXHIBIT #26] and briefed the INS Consenting Alien Protection Officer (CAPO) (who coordinates security for defectors in particularly sensitive cases) in the event Medvid chose to seek asylum. Parra also ordered all present not to comment to the press or other outsiders, but to refer all inquiries to either Rasmussen or Parra.

By 5:00 pm, Parra had conversed with Leo Soto, Executive Assistant to the Regional Commissioner in Dallas, and with Buck Brandemuehl, Border Patrol Chief in Washington, DC. He kept them apprised on developments. [EXHIBIT #27] They talked again after screening the 6:00 pm evening TV news for any word on the incident. No mention of the case appeared in either national or New Orleans media programs at that time.

They were all relieved that they could continue to operate for a while without the added pressure of press coverage and adverse publicity. They were still hopeful they could get Medvid back and resolve the asylum issue promptly. Allegations and rumors, such as the story that Border Patrol agents had "beaten" the sailor and carried him back to his ship, were unfounded and damaging, and Parra wanted to get all the facts before any press releases were required. He stressed to CSCE investigators that he simply wanted to have accurate information, not initiate a "cover-up," as critics have alleged.

Throughout the day, Parra had attempted to reach New Orleans INS District Director David Lambert, who was on personal leave. After watching the 6:00 pm evening TV news, Parra succeeded in reaching Lambert and advised him of the Medvid incident.

d) US Agencies coordinate operations

Captain Joel D. Sipes, Chief, Operations Division, 8th Coast Guard District, in New Orleans, first learned of the Medvid situation in a telephone call from Tabor. Tabor briefed him on the incidents that had unfolded and indicated that the Border Patrol might need Coast Guard assistance, if Medvid had to be taken off his ship. Sipes assured Tabor of complete cooperation and proceeded to take "quiet" action to insure the availability of Coast Guard vessels. Sipes issued orders for the Dependable, a 210 foot cutter, to advance into the southwest pass (Mississippi River inlet from the Gulf of Mexico) and proceed upriver to a position that was not readily observable from the Soviet vessel.

At approximately 3:30 pm (4:30 Washington time), Captain Frederick J. Grady, Chief, Merchant Vessel Personnel, US Coast Guard headquarters in Washington, DC, received a call from Mark Palmer, a State Department official. Palmer requested that the Coast Guard make arrangements in New Orleans to hold the Marshal Konev in port, in the event that it attempted to depart prior to the Medvid questions being settled.

Grady then briefed Captain James H. Parent, Deputy at the Marine Environment and Systems Office, and Admiral Donald Thompson, Chief of Staff, of the situation. Captain Parent contacted the 8th District Coast Guard Headquarters in New Orleans. He learned that Border Patrol had already alerted them but had not yet requested specific action. Parent then issued verbal orders to prevent the Konev from leaving port, in the event that it attempted to get underway. Written orders followed shortly, confirming that verbal command.

Commander Thomas W. Snook, 8th Coast Guard District Legal Officer, received word of the Medvid incident at approximately 3:30 pm from Captain Ackland, the District Chief of Staff. Snook then contacted Mary Cupp, Assistant Regional Attorney, South Central Region, US Customs Service, and inquired about Customs' authority to delay foreign vessel movements in the Port of New Orleans. Snook explained to Cupp that a Soviet seaman had jumped ship, been returned by INS, and was now sought for further interview about possible asylum status.

Cupp alerted, and sought guidance from, Customs Regional Commissioner Robert Grimes, an individual in the chief counsel's office at Customs headquarters in Washington, DC, and the Department of State's Soviet desk.

The Coast Guard established a task force, at the New Orleans 8th District Headquarters, to address its role in the incident. In a special briefing session, Captain Richard A. Sutherland outlined the situation as currently known. At the time of the briefing, the 8th District Operations Center was receiving requests for assistance from the State Department, including contingency plans to detain the Konev in case it attempted to get underway.

When interviewed by CSCE staff, US Customs Special Agent Phyllis Ann Dittler, New Orleans duty agent for the weekend, recalled receiving a telephone call from the State Department regarding the Medvid incident at about 5:15 pm. She immediately alerted her superiors and a command post was activated at the New Orleans office by Regional Commissioner Grimes.

Harry M. "Clay" Allison, Deputy Assistant Regional Commissioner for Enforcement, confirmed that he and Regional Commissioner Grimes were notified, at the end of business on Friday, of several calls received by the office regarding the Medvid incident. They established a command post to monitor developments and mobilize Customs manpower to react to the possibility of requests from the Border Patrol.

According to Grimes, who was interviewed by CSCE staff, local Border Patrol officials requested that Customs use its clearance authority to prevent any movement of a particular Soviet vessel, the M/V Marshal Konev, anchored in the Mississippi River on October 25, 1985. Customs was subsequently requested to also provide personnel to support the Border Patrol in their plan to remove a Soviet seaman from that vessel. Grimes and Allison assembled managers and other Customs personnel into a command center operation and Grimes designated Mary Cupp to begin legal research on Customs' authority to respond to the unusual circumstances they faced.

After some deliberation over his authority and available options, tempered with guidance from Customs officials in Washington, DC, Grimes instructed District Director Joel Mish to withhold approval of any Konev application for clearance to move the vessel, as Border Patrol had requested. Grimes also issued orders for armed Customs agents to board the ship, formally notify the Master (Captain) of that restriction on the vessel's movement, and remain on board to enforce that restriction.

Customs Supervisory Special Agent Ernie Stein contacted Assistant Special Agent in Charge Leonard C. Lindheim of the local Customs field office, at his home after working hours. Stein relayed instructions for Lindheim to report to the command post at Customs regional headquarters to assist with various tasks there. When he arrived at the command post, Lindheim devised rotating shifts of Customs personnel to work around the clock, at three locations – aboard the vessel, at the Belle Chasse launch site and on shore near the ship. Customs used two-man teams for each shift at each location, except for some single-person shifts stationed on the east bank of the river to watch activities from the opposite side of the ship. Their mission included the surveillance and reporting of any attempt to move the Konev, as well as providing support for State Department and INS actions, should the need arise.

Customs agents were instructed to "use whatever force is necessary to prevent departure of the ship." Several agents interviewed by CSCE investigators stated that they did not then, nor do they now, understand clearly what they were authorized or expected to do, in that eventuality. These agents said they asked whether they were expected "to shoot anyone," using their small sidearms. At least three witnesses expressed real concern over the possibility of "starting World War III." The best guidance available at that time, due to the unique character of the incident and the lack of complete intelligence in the early stages, was for the agents to "do whatever you feel is necessary (to prevent the Konev departure)." All sources questioned on this point praised US officials for their handling of the operation and seemed to have a sincere appreciation for the gravity and sensitivity of the events.

Customs personnel were also employed to control all traffic to and from the Konev, permitting boarding or departure only by those persons specifically authorized by State Department officials.

Two Customs agents arrived on board while Worley was still in the Captain's stateroom. Worley and Vannett ate with the ship's crew that evening, and then Vannett left the ship, being relieved by Shepler.

e) State Department leadership

According to Ray Kisor, Associate Commissioner for Enforcement, INS, whose responsibilities include supervision of the US Border Patrol, INS initially took the lead in the Medvid case during what he described as the "immediate action" phase. That is, INS took actions to make certain that Medvid was alive, that the ship was detained and that INS agents were stationed with Medvid. Later, the Department of State assumed the lead.

The State Department assumed leadership of the US handling of the Medvid incident from the moment it became aware of the problem, at approximately 3:40 pm (Washington time) on Friday, October 25, 1985. Later, Louis Sell, DOS Soviet desk bilateral affairs chief, was appointed as "the man in charge" for the US interagency operation "on the scene" at New Orleans. State Department records reveal (and Mark Palmer, Deputy Assistant Secretary of State for European and Canadian Affairs, recalled for CSCE investigators) that President Reagan approved the Department of State and Sell for those roles.

About 7:00 pm, Parra received a call from Kisor advising that both the Soviet Embassy and the US State Department were dispatching negotiating teams to New Orleans. Parra learned that those parties should arrive at the New Orleans airport late on Friday evening, and that the Border Patrol should provide transportation for them from the airport to the Konev. The Soviets and State Department representatives did not travel together.

According to Parra, INS/Border Patrol had stabilized the situation on the Konev, but welcomed the expertise of the State Department to manage the overall, complex Medvid matter. Chief Tabor personally met Louis Sell, the State Department representative from the Office of Soviet Union Affairs, at about 9:30 pm. John Caplinger, INS Assistant District Director, accompanied them to the Border Patrol sector headquarters, on the west bank of the Mississippi River, in Algiers, LA. Sell immediately called his Washington, DC office for a briefing and update. By this time, Mark Palmer, Deputy Assistant Secretary for European and Canadian Affairs, was in charge of the Medvid operations at State, both for his department and for the inter-agency task force.

Through Worley, INS received information that Medvid had been "drugged" and that he had apparently slashed his wrist in a suicide attempt. It was decided that a doctor would be needed. Caplinger eventually identified and obtained permission to utilize the services of a US Navy doctor, Lieutenant Commander John M. Caruthers, who was on duty that evening at the nearby Naval Support

Activity in Algiers, LA. Caplinger located and brought Caruthers to sector headquarters, where Sell and other officials were meeting.

Later that evening, William R. Collette, a 19-year veteran with the Border Patrol, was sent to the airport to meet Jim Thessin, a State Department lawyer. Collette remembered that three Soviet Embassy officials arrived on the same plane with Thessin, but they were not travelling together and Collette did not greet them. The Soviets were met by shipping agent Thomas Richard.

Thessin recalled for CSCE investigators that the Border Patrol car in which he was riding developed mechanical problems and he lost about an hour enroute to the Konev. Another vehicle came to pick him up. During the wait, he called the State Department in Washington from a shopping center pay telephone and spoke to Jim Hergen, another lawyer working on the Medvid planning. As a result of the delay, Thessin arrived at the launch site after the Soviets had boarded the ship.

f) Detaining the Konev

About 10:30 pm, Supervisory Special Agent Arthur L. Budzeyko, who heads the air smuggling investigations group for Customs in the New Orleans area, was instructed to go directly from his home to the Belle Chasse launch site, in uniform and armed. He was met there by Special Agent Bobby Joe Rector and they became the first Customs officials responding to support INS. On orders from Grimes and Allison, they boarded the M/V Marshal Konev shortly before midnight with instructions to block any attempts to move the Konev from its anchorage and to "assist the Border Patrol as needed." By this time, there were already three Border Patrol agents in civilian clothes, one or two INS investigators, and a State Department official aboard the Soviet ship, as Budzeyko recalled.

At 11:00 pm, Parra watched the TV news to see if the Medvid story had been discovered by the press. He then contacted Soto and advised that there was still no news coverage. Later that evening, he also noted no coverage in the local newspapers, and so advised his INS superiors.

Late Friday evening or early Saturday morning, Lieutenant Commander James F. McEntire, Commanding Officer of the US Coast Guard Cutter (buoy tender) Salvia, received a telephone call from the Coast Guard 8th District Operations Center in New Orleans. He was ordered to bring up the Salvia immediately from Mobile, Alabama to the mouth of the Mississippi River. The Coast Guard Cutter Point Verde was similarly ordered to the New Orleans area from Mobile, and she arrived ahead of the Salvia, anchoring several miles upriver from the Gulf of Mexico on Saturday.

8. THE KONEV CONFRONTATIONS

a) The meeting aboard the Konev

State Department officials wanted to delay the boarding of the Konev by Soviet Embassy representatives until Sell was ready for them. Some witnesses told CSCE investigators that all State Department and Soviet officials boarded the same launch and went to the Konev together. However, official logs kept at the time of the incident indicate that such was not the case. Sell boarded the ship at approximately 10:50 pm, where he was briefed by Worley on Medvid's condition, location, confinement circumstances and other pertinent facts. The Soviet Embassy officials, Igor P. Bondin, First Secretary and Consul, and Vladimir A. Kosov, Vice Consul, boarded at approximately 12:45 am.

A short time later, a conference was held between the Captain, Bondin, Kosov, Sell and Shepler. Sell told the Soviets that US officials wanted Medvid for an interview but Bondin, ranking Soviet official and spokesman on the Konev, told Sell this would not be allowed. At this point, Shepler served the Captain with an order to prevent the departure of "Medvid, MYROSLAW."

Bondin asserted that the INS paper was worthless, to which Shepler responded that the Soviets would not be allowed to move the ship without the specific permission of the President of the United States. The Soviets were not swayed and refused to give Medvid up, repeating their previous orders for all Americans to get off the ship. Sell affirmed Shepler's statement to the Soviets and refused to leave the ship without Medvid. He said the Americans would simply sit there until they got Medvid.

Eventually, the Americans were told to leave the Captain's quarters, so they returned to the ship's lounge located on a lower deck. All US personnel were restricted to that lounge, which served as a kind of museum for the ship (full of memorabilia of Marshal Konev, a World War II Soviet hero for whom the ship is named).

Caplinger told CSCE investigators that he boarded the ship later that evening to determine whether Shepler had seen Medvid. He remained on board until he determined that nothing further was going to be done that night. It appeared to him, and other witnesses, that both sides were playing out their diplomatic options.

That first night, the Soviets took away their toilet paper and toilet seat and placed "guards" over the Americans at all the doors to the lounge. When some of the US party asked that the air conditioning be adjusted to warm up the lounge, the Soviets apparently did the opposite, and the wardroom became extremely cold. US personnel had no pillows or bedding and tried to sleep on the floor.

When it became clear that the Americans were not leaving, the Soviets turned down the air conditioner and returned the toilet seat and paper. The next night, Border Patrol agents brought blankets aboard the ship. The Soviets provided food for the Americans during their time aboard the Konev.

Border Patrol and Customs personnel were relieved by replacements about every four hours, but Sell, Thessin, and Shepler generally remained on board. Sell and Thessin went ashore several times to call Washington and Worley kept in contact with Border Patrol officials by radio.

After Friday night, at about two hour intervals, the Americans were repeatedly ordered to get off the ship by either Captain Tkachenko or the first mate. Just as persistently the Americans refused to go, with Louis Sell giving the order to sit tight. Bondin discovered that Shepler was an asylum officer and became irate, ordering Shepler to leave the ship. But Shepler stayed on board because Sell feared he might not be able to return. For some unexplained reason, Bondin later changed his mind and told Shepler he could stay.

b) The press is alerted

About 7:00 am on Saturday, Chief Tabor called Parra at his home. He was very upset about an article in the Times-Picayune newspaper (New Orleans) that quoted District Director Lambert on the Medvid incident, as follows:

> "About midday, the seaman jumped, apparently as the ship was moving," said David H. Lambert, district director of the U.S. Immigration and Naturalization Service.
>
> Lambert said he pieced together this story from reports:
>
> "When the seaman reached shore, the Harbor Police didn't understand him because he was speaking Russian, but believed he was a stowaway, and turned him over to the Border Patrol, which also is part of the Immigration Service, but not within Lambert's jurisdiction.
>
> "The Border Patrol didn't understand what was going on and didn't realize he was trying to defect, and brought him back to the ship," said Lambert.
>
> "Border Patrol agents then called the Immigration Service office in New Orleans, which, in turn, contacted the headquarters in Washington," he said.
>
> "The central office called in the State Department," he said, "reportedly so its staff could negotiate with the Russians to let him off the ship."
>
> "It's very sad to me," Lambert said. "He made it to shore, then he was put back on his ship. But, at least," he said, "Border Patrol agents returned to the ship and guarded the seaman, so no one on board could do anything to him."

O'Connor and Brandemuehl also called Parra and asked what had happened, referring to the news article and to their specific instructions of "no comment" to the press. Parra could not immediately obtain a copy of the article, but upon arrival at his office found that its impact was significant. Brandemuehl had decided to come to New Orleans with the Border Patrol Tactical Team (BORTAC) and personally supervise the Medvid operation for INS/Border Patrol. O'Connor had also decided to come to New Orleans and ordered Lambert to a meeting with him and Brandemuehl at Sector Headquarters.

When the story broke, INS began receiving numerous press inquiries. Their response at that time consisted of a basic story about a seaman who had jumped ship and comments that INS was sorting out the details, especially regarding the rumored use of force. Parra's staff began referring all inquiries to the Dallas Regional Office, until sometime on Saturday when a national "hot line" was established in Washington, DC to handle such calls. Media personnel swarmed to the scene, setting up TV cameras at the Belle Chasse launch site, even though Hurricane Juan was approaching and the weather was becoming windy and rainy.

c) Information from Soviet crew members

Patrol Agent McDonald began his Saturday shift aboard the Konev early, leaving the dock for the ship at about 6:00 am. He recalled for CSCE investigators that he found other Americans still there, in the lounge (or museum). He remembered that Sell, Worley, Shepler and someone from Customs greeted him, and he also remembered others who boarded on Saturday, including Jim Thessin, Ross Lavroff (State Department interpreter), and Dr. Caruthers (US Navy).

McDonald recalled speaking with a ship's crewman named "Alexander" (Aleksandr Kolodenko) at some length. Alexander was allegedly the ship's supply officer but, in McDonald's opinion, had more training than that job should have required. He was about 6' tall, in his late 20's or early 30's, with dark blonde hair and slender build. A second crewman with whom McDonald talked was identified as "Vladimir," who was shorter, with a stocky build and dark hair. Both Alexander and Vladimir spoke English with McDonald.

Alexander repeatedly told McDonald that Medvid was "crazy." He said "Immigration do job," and asked "What's the big deal?" He also said that Medvid was still on board, alive but under sedation, and was being constantly watched by another crewman in the infirmary. Alexander reported that the Soviet doctor had found Medvid's heartbeat normal.

Alexander asked McDonald about buying some items for him at a nearby store, stating that he had some American dollars to give to McDonald for the purchase. Alexander told McDonald that he knew there was a store a short distance down the highway because he had seen it "when we looked for Medvid." However, McDonald could not clarify for CSCE investigators whether Alexander meant that he had been ashore or that he had seen the store from the Konev. McDonald noted that the store may have been visible from the Konev, since the ship was empty and rode very high in the water.

d) Medvid observed in the infirmary

On Saturday morning, Shepler discovered that two Soviet ships had passed the Marshal Konev during the night on their way downriver. He realized then that no one had been assigned to watch the starboard side of the ship. Shepler and Sell discussed the problem and became concerned about the possibility that Medvid might have been secretly removed from the Konev. At this point, Sell went to the Captain and Bondin and demanded to see Medvid. The Captain refused, even though protracted discussions and arguments followed. US officials, especially Sell, made several trips to shore to call Washington for guidance.

Around 1:00 pm on Saturday, after persistent complaints from Sell, the Soviets relented and told Sell he could see Medvid. To ensure Medvid's identity, Sell obtained Medvid's seaman's book, which contained his photograph. A suggestion was also made to bring either Spurlock or Bashaw on board the ship to identify Medvid. Vannett was nearby, on shore, at the time and believed competent to identify Medvid from his earlier contacts in the infirmary. Since Spurlock and Bashaw were some distance from the scene, Sell felt Vannett could handle the identification matter.

Worley left the ship about 3:00 pm on Saturday and, at approximately 4:00 pm, Sell, Caruthers and Vannett went into the infirmary to see Medvid. Sell had determined that this visit was solely to establish Medvid's identity and condition at that time. He knew it would still be necessary to conduct a full interview of Medvid in a more neutral setting.

Louis Sell took a Border Patrol photo (mug shot) of Medvid with him to the infirmary. Both Sell and Caruthers used the picture to identify the man lying in the sick bay. Caruthers was convinced, based upon this comparison and Vannett's identification, that the man in the sick bay was indeed Medvid.

The ship's Captain was present in the sick bay during this initial examination and explained to Sell and others that Medvid had been difficult to handle when he was first brought back to the ship.

Caruthers said that he was aware of the reported struggle on shore and was cognizant of the possible injuries sustained by Medvid. He told CSCE investigators that he specifically looked for signs of such injuries but found only the cut on Medvid's wrist, which he believed might have been self-inflicted, as the Captain had reported. He found no sign of head trauma.

Caruthers also revealed to CSCE investigators that the Konev's doctor had told him he had given Medvid sedatives, described by Caruthers as "neuroleptics," on Friday, October 25, and some kind of "pain killer," on Saturday, October 26, just a few hours before Caruthers' examination. Caruthers'report of this preliminary examination revealed no serious injuries or concern about drug effects.

After the meeting with Medvid, Sell instructed Vannett and Caruthers to immediately write down their observations. [EXHIBITS #28 and #29] When they had done so, Worley took their notes immediately to Sell, who was by that time at the Border Patrol Sector Office in nearby Algiers.

Apparently, the Soviets thought this meeting would conclude the Medvid matter. However, Sell confronted them later, explaining that his visit with Medvid was not intended to establish Medvid's desires regarding asylum and that an interview in a neutral setting was still deemed absolutely necessary.

9. THE OPERATIONAL PLANS

In the ensuing hours, countless discussions over possible actions to be taken in the case transpired between the INS Central, Regional, District and Border Patrol Sector Offices, the Department of Justice, the Department of State, and the NSC. Officials in Washington continued to request all available information on the incident, and to deliberate available options, including forcibly removing Medvid from the Konev.

On Saturday morning, the New Orleans Sector and District Offices of INS/BP were advised that Dallas Regional Commissioner Ed O'Connor would arrive later in the day, to personally direct INS actions at the scene and to oversee an internal investigation of the matter. The New Orleans offices were also advised that Border Patrol Chief Brandemuehl would be arriving in New Orleans from Central Office to assist in the case.

The chronological log, maintained throughout most of the Medvid incident by State Department officials, notes that at 1:00 pm (Washington, DC time) on Saturday, October 26, Mark Palmer, Deputy Assistant Secretary of State, requested that the Department of Justice take the lead in organizing efforts to remove Medvid from the ship. [EXHIBIT #30] At approximately 2:45 pm (Washington time), Acting Secretary John Whitehead called Soviet Ambassador Anatoly Dobrynin to clarify and discuss US intentions regarding Medvid. The text for Whitehead's verbatim delivery to Dobrynin, prepared jointly by the Office of Soviet Union Affairs and DOS lawyer Jim Hergen, notes:

> "I want you to know that unless your people in New Orleans have been authorized to accompany the seaman to a medical facility and that he has left the ship by noon tomorrow (10/27/85), we intend to exercise our legal right to remove the seaman from your vessel in order to determine his intentions." [EXHIBIT #31]

At 4:00 pm (Washington time), the Justice Department notified State that INS had been tasked with developing the operational plan for presentation to the NSC, at which time, Mark Parris, Director, Office of Soviet Union Affairs, insisted that the Department of State have the final word on when and if the plan was to be implemented.

A short time later, Border Patrol Chief Brandemuehl spoke with Commissioner Nelson, Attorney General Meese and Deputy Attorney General Lowell Jensen, and was given specific instructions to develop an operational plan for their approval. By 7:45 pm (Washington time), Chief Brandemuehl, Deputy Chief Thomas Leupp, and Border Patrol Tactical Team (BORTAC) coordinator Thomas Walters were enroute to New Orleans to develop the contigency plan for the forced removal of Medvid from the ship, in the event negotiations failed, and to otherwise assist local officials with the case.

State Department records indicate that officials from State Department were under the impression that a contingency plan was being prepared by INS on Saturday afternoon. When State Department officials learned on Saturday evening that the plan had not yet been developed, they began pressuring the Justice Department for results. Justice Department officials advised that INS officials were enroute to New Orleans and that a plan would be submitted the following day.

a) Development of a contigency plan

It was after midnight before all of the INS Central and Regional Office representatives arrived at the New Orleans Sector Headquarters. The officials were immediately briefed on recent developments. Deputy Chief Patrol Agent Worley described the physical layout of the ship, the prevailing conditions in which Medvid was then situated, and his overall personal observations about the operation.

By this time, twenty-five additional Border Patrol Agents had been brought into New Orleans from Gulfport and Baton Rouge, and support had been requested from Customs and the Coast Guard. Although the New Orleans FBI office offered assistance, staff investigators found no evidence of FBI involvement in the planning or execution of the Medvid contingency plan.

A meeting was held to advise participants in the operation of overall strategy. Chief Brandemuehl took charge of the meeting, basically dividing the INS/BP group into three teams. The first team, under the supervision of Regional Commissioner O'Connor, was to conduct a thorough investigation of the entire Medvid incident; the second team would research legal aspects of the case; and the third team, under the supervision of Chief Brandemuehl, would develop a contingency plan to forcibly remove Medvid from the ship. Brandemuehl reiterated the INS Central Office order prohibiting all comments to the press, with clear reference to District Director Lambert's quoted remarks in the Times-Picayune.

Brandemuehl instructed Tom Walters, as head of the BORTAC team, to take primary responsibility for drafting a contigency plan and assigned Deputy Chief Worley to act as second in command. Deputy Chief Leupp also provided assistance.

Since the storming of the ship was to be a new experience to the INS/BP agents involved, the expertise of certain Coast Guard personnel was sought. Armand Chapeau, Commander, US Coast Guard and Director of the Vice President's National Narcotics Border Interdiction System, Gulf Region, was brought to New Orleans to lend his expertise to the formulation of the action plan and oversight of its implementation if it became necessary.

By this time, some information was available from agents who had been aboard the Konev. For instance, Customs forms filed on behalf of the M/V Marshal Konev revealed that the ship was carrying 10,000 rounds of ammunition and 3 hunting rifles. At least one handgun was also reported to be on board.

Shepler recalled for CSCE staff that he was instructed to return to the Konev armed. He was told to find Medvid's exact location, identify doors with "kickpanels," and pace off certain distances. If the operation were executed, Shepler's assignment was to take control of the gangway.

Shepler said that while he was aboard the Konev, he continuously roamed the ship, although he was inevitably caught and told to return to the wardroom. When he returned to the ship early Sunday morning, he began searching in earnest for Medvid. He found what he believed to be the room where Medvid was being held because he saw a Soviet crewman sitting outside a cabin, as if guarding someone inside.

b) The interagency committee of policymakers

Meanwhile, in Washington, DC, an interagency committee (distinct from the working level task force at State) had been established to develop and promulgate policy in the handling of the New Orleans incident. The committee included representatives from the State Department (Deputy Assistant Secretary Mark Palmer), INS (Commissioner Alan Nelson and Assistant Commissioner Ray Kisor), Treasury Department (Deputy Secretary J. Robert McBrien), Coast Guard (Russ Wilson, Coast Guard Liaison with DOS), and National Security Council (Paul Thompson, Military Assistant and General Counsel).

On Sunday, October 27th, Palmer chaired a meeting at which the committee decided the INS role would be to a) provide security at a neutral site *while DOS questioned Medvid,* if negotiations to secure the seaman's release were successful, or alternatively, b) take Medvid forcefully, if negotiations failed. In the event that option "b" was necessitated, specific instructions were written to detail the precise execution of the plan for forced removal.

The Palmer committee approved the INS-drafted assessment and operational plan at the Department of State Operations Center on Sunday afternoon. [EXHIBIT #32]

The original estimated time for execution of the contingency plan was between 12:00 noon and 2:00 pm on October 28, 1985. Subsequent changes in the plan provided for the activities to commence as a pre-dawn surprise operation. Inherent in the planning was the ability to activate the operation quickly and decisively, and to hold the use of force to a minimum by using superior numbers of personnel.

Participants in the operation (to be directed by DOS) were to include the following agencies:

1. Immigration and Naturalization Service
2. United States Customs Service
3. New Orleans Harbor Police
4. Plaquemines Parish (LA) Sheriff's Office
5. United States Coast Guard
6. Louisiana Air National Guard
7. US Naval Air Station, Belle Chasse, LA

Legal authority for the action was cited as Section 215 of the Immigration and Nationality Act and 8 CFR Section 215.

Implementation of the aforementioned contingency plan was never necessitated because the Soviets agreed to allow an interview with Medvid aboard the Coast Guard Cutter Salvia. However, several interviewees noted that the plan for armed retrieval of the seaman from the Marshal Konev into United States' protection came within a few hours of implementation.

Several of the agents interviewed also expressed concern that the plan was to be implemented with regular Border Patrol and INS agents. Only four BORTAC team members, who are specially trained in tactical operations, were on site.

c) The internal affairs investigation

On Saturday afternoon, prior to the arrival of the Regional Commissioner and his staff, Patrol Agents Spurlock and Bashaw were instructed to come to the Sector Office and write detailed memoranda of their recollections of the events of the Medvid case. Spurlock's handwritten notes, made while he was on the telephone with Mrs. Padoch and Medvid, had already been retrieved from the trash can.

That evening, INS Regional Commissioner O'Connor arrived with his staff. Millard C. McMillin, Jr., Assistant Regional Commissioner, Investigations, was in charge of the internal investigation. Charles F. Williams, Deputy Assistant Regional Commissioner of Investigations, and Michael D. McMahon, Deputy Assistant Regional Commissioner, Investigations, had primary responsibility for conducting the investigation into possible employee wrongdoing.

Williams and McMahon began their interviews upon their arrival at Sector Headquarters late Saturday evening. It was almost 6:00 am on Sunday before they finished taking sworn statements from agents Spurlock and Bashaw. The INS investigative team, assisted by local INS investigators, then began locating and interviewing the other known witnesses in the case, including: Mike Flad, Tim Maloz and Raymond Guthrie.

McMahon contacted the New York INS District Office and requested assistance in locating and interviewing Irene Padoch. After several hours, agents discovered the location of Padoch's summer house in the Catskill Mountains and were dispatched to question her about the case.

Padoch recalled for CSCE investigators that between 5:00 am and 6:00 am on Sunday, October 28, (New York time) someone knocked on the door of her summer house. Her husband greeted Edmond Bourke from the INS, who asked to speak with Mrs. Padoch. Since the telephone to the Padoch house had been disconnected and Bourke needed to contact his supervisor before questioning Mrs. Padoch, he went with the Padochs to the Ukrainian Estate (community center) to use a telephone. While they were there, four other INS agents arrived.

Bourke had been dispatched directly from his home in upstate New York and did not have the required INS sworn statement forms with him. As a result, Bourke simply used plain paper to record the questions and replies in the Padoch interview.

d) The Wyman Interviews

On Saturday evening, during the 10:00 pm TV news, the New Orleans ABC affiliate (Channel 8) aired a segment about a Soviet seaman who had been wandering around New Orleans, lost and confused. They reported that the seaman had requested asylum but had been returned to his ship in Belle Chasse.

Joseph Wyman told CSCE investigators that he saw the broadcast and immediately called Channel 8. He spoke with an unidentified lady and told her that they (he and his nephew Wayne Wyman) "had him first." The reporter told Wyman that someone from the newspaper staff would be out to interview him the next day.

The Channel 8 interview of Joseph Wyman, aired that Sunday, was the first indication to INS officials that Medvid had been seen by someone prior to his contact with local police. However, Wyman was mistakenly identified as "Watson" and agents were, at first, unable to locate the Belle Chasse jeweler.

Then on Monday morning, agents Williams and McMahon went to Belle Chasse to meet with local District Attorney Brian Bubrig. The District Attorney had proceeded to become involved in the case, but after meeting with Williams and McMahon, agreed to allow the federal agents to conduct their investigation without interference. After that meeting, Williams and McMahon met with Dominic Verdi, their contact at the Plaquemines County Sheriff's Office. As the three men drove past a small shopping center in Belle Chasse, Verdi pointed to a man standing outside one of the stores and identified him as Joseph Wyman, "the first person to talk with Medvid." Although Williams and McMahon were technically unprepared for the interview, they decided to speak with Wyman anyway.

The agents introduced themselves to Wyman and questioned him regarding his knowledge of the case. They also discovered Wayne Wyman's involvement and interviewed him at that same time. The agents were given the envelope on which Medvid had written some words and the glass jar which Medvid had left in Wayne Wyman's car. Since the agents had not expected to interview Joe and Wayne Wyman that morning, they did not have a copy of the Border Patrol identification photograph of Medvid with them. However, the agents had no doubt that the seaman encountered by the Wymans was Miroslav Medvid.

The agents completed their investigation later that day and immediately prepared their report, which was submitted to Regional Commissioner O'Connor who, in turn, submitted it directly to INS Commissioner Nelson in Washington. [EXHIBIT #33]

10. SALVIA INTERVIEW

a) Positioning the Coast Guard vessels

On Sunday morning, October 27, 1985, the US Coast Guard cutter Salvia completed a slow and difficult trip through stormy seas from Mobile, Alabama, and anchored in the Gulf of Mexico, just off the mouth of the Mississippi River. The other Coast Guard cutter, the Point Verde, had arrived ahead of the Salvia and was anchored several miles upriver from the Gulf. Both vessels were important elements in the Coast Guard plan to prevent any unauthorized or unscheduled movement by the Marshal Konev from its anchorage.

Later that day, Lieutenant Commander James McEntire, acting on orders from Coast Guard 8th District Headquarters in New Orleans, moved the Salvia to a point just out of sight and downriver from the Marshal Konev, in the vicinity of the Belle Chasse anchorage.

Early Monday morning the Salvia was again moved, this time to a position about 300 yards astern of the Marshal Konev, under orders to prevent the Konev from leaving its anchorage. Captain Lindak, the senior Coast Guard officer on the scene, boarded the Salvia between 4:00 and 5:00 am. Later that morning, around 8:30 am, Coast Guard Commander Walter Bodner, 8th District staff, conducted a briefing for Coast Guard personnel aboard the Salvia.

A safety zone was established around the Konev, to keep other boats away and allow Coast Guard vessels room to manuever if it became necessary to take swift action.

b) Activities aboard the Konev

On the Marshal Konev, Americans from the State Department, INS and the Customs Service, along with US Navy Dr. Caruthers, waited for some word about their next moves. Sell had continued to negotiate for a proper interview with Medvid in a neutral location, and both he and the Soviets periodically communicated with their superiors in Washington, DC, from telephones on shore. [EXHIBITS #34 - #39]

Tom Simons, formerly Director of the State Department's Office of Soviet Union Affairs and an experienced hand in asylum negotiation situations involving Soviet nationals, arrived in New Orleans on Sunday night. Although he was at that time detailed away from the Department in a training program, he had been "drafted" by Palmer to assist Sell as a silent partner of the DOS team, operating on shore and maintaining contact between Sell and Washington headquarters. Simons said he did not believe the Soviets ever knew of his presence in New Orleans.

About 8:00 am on Monday, Collette and McDonald boarded the Marshal Konev to relieve other Border Patrol agents. Collette was assigned to gather intelligence information about the ship, and to pass it along to the boarding party planning the possible forced removal of Medvid. He was able to roam through different parts of the ship on several occasions and discovered that, by going up one deck level from the wardroom, he could see both sides of the vessel. At one point, he spoke to several Soviet crewmen who were repairing motorized lifeboats. On each of his forays, he was confronted by Soviet crewmen and told to return to the wardroom.

By noontime, Washington officials of the State Department and other agencies learned that the Soviets had finally decided to allow an interview of Medvid that same afternoon, aboard the Coast Guard cutter (Salvia) anchored near the Konev.

c) In Washington, DC

INS Commissioner Nelson notified State Department that he was designating Louis Sell and Border Patrol Chief Brandemuehl as "departure control officers," thus enabling them to detain Medvid, pursuant to 8 CFR Section 215, if necessary. Nelson also specifically authorized Brandemuehl to hold Medvid in US custody for a twenty-four hour period. These delegations were phoned to Simons in New Orleans and to INS officials around 12:15 pm that Monday.

From this point until the final decision to release Medvid twenty-four hours later, there were frequent calls from both the State Department and INS to the White House Situation Room, keeping the White House and the National Security Council advised of developments.

NSC Soviet Affairs Chief, Jack Matlock, was the primary contact between the White House (NSC) and State Department officials Palmer and Parris in Washington. Matlock reported frequently to NSC Deputy Chief Admiral John Poindexter, and occasionally reported directly to National Security Advisor Robert McFarlane.

Poindexter was the primary "action official" at NSC, on McFarlane's behalf, and functioned as the main link with President Reagan on items referred for Presidential decision. However, McFarlane also distinctly recalled to CSCE investigators that he had personal discussions about Medvid with the President, several in the presence of other top government officials.

d) Arrangements proceed for the Salvia interview

Lt. Commander McEntire prepared his vessel for the interview session originally set for 3:00 pm on Monday, with very little notice. The Salvia was intended to serve as a "neutral" site and Coast Guard personnel were instructed not to interfere with the interview process or participants in any way. They were instructed to "keep a very low profile" and to stay away from the Salvia wardroom, where the interviews would be conducted.

It had been decided earlier that someone from the INS with authority to grant asylum should be present at or near the interview site, in the event that Medvid requested asylum. The authority to grant asylum rests with the INS District Director. INS Regional Commissioner O'Connor instructed Parra, in his capacity as Deputy District Director, to exercise that authority if the opportunity arose.

Once plans were made to conduct interviews on the Salvia, it was decided to have an advance party go aboard and remain out of sight. The advance party included INS/Border Patrol officers

Worley, Parra, Walters, David Mandel and the four BORTAC members. (Tom Simons and US Air Force psychiatrist Dr. William Hunt also accompanied this group). They traveled in a van to a river launch dock near the Konev. From there, they boarded a water taxi and were taken to the Salvia, approximately thirty minutes prior to the arrival of Medvid and the Soviet contingent. The team was sequestered in the Chief Petty Officer's Mess, out of sight of the incoming Soviets.

Parra emphasized that everything was in place before the Border Patrol advance party left Sector Headquarters headed for the Salvia. Various contengency options had been developed. If action was necessitated, they had only to choose the appropriate plan. Parra said that the decision about which option the US would pursue depended roughly 95% upon what transpired at the US/USSR meeting aboard the Salvia.

e) Medvid party prepares to depart the Konev

Collette told CSCE investigators that he thought it was approximately 4:30 pm when he saw Medvid come out on the Konev main deck, accompanied by other Soviets, including the Konev's Captain, the political officer, the ship's doctor, the chief officer and two Soviet Embassy officials.

Collette described Medvid as being approximately 5'10", 170-180 lbs., with short hair. He said Medvid had a "regular build," was "semi-athletic," wore a charcoal suit, and had one wrist bandaged. He appeared pale and nervous or anxious, but was smiling. Collette recognized Medvid from the photograph taken earlier by Spurlock.

According to Collette, Medvid spoke with several of the ship's officers who accompanied him. Most of the Konev crew had gathered on the deck, "wearing slacks and nice shirts." Several took photographs of each other and of Medvid. Collette recalled that the ship's crew treated Medvid as if they never expected to see him again; as if it was a farewell sendoff.

Shepler also saw Medvid as he was leaving the Konev. According to Shepler, the fingers on Medvid's injured arm were purplish and swollen. He described Medvid as being 5'7" or 5'8", about 150 lbs., of slender build, with dark brown hair. He said that Medvid had "scupltured features with a long face." He was wearing a suit with no tie.

McDonald also saw Medvid at this time, and recalled that Medvid had a sling on his arm, was wearing a suit with no tie, had short cropped dark brown hair, and sharp features. He also thought that Medvid appeared nervous, and he noted that the Captain was very solicitous toward Medvid. McDonald remembered that Medvid's Soviet shipmates came out on deck to see him off, and that many of them were taking photographs.

Several other Americans, including US Customs officers who were aboard the Konev, also observed Medvid during the few minutes he was on deck awaiting transportation to the Salvia. They remembered him smoking and chatting in low tones, in a foreign language, with other Soviet officers and crewmen.

The first Coast Guard small boat, intended to transfer the group to the Salvia, was unable to hold position against the ship due to rough waters, and another craft was summoned. This caused a five to ten minute delay.

During the delay, Collette was able to see Medvid clearly, since he was as close as five and not more than twenty feet from him at all times. Collette noted that Medvid was surrounded by Soviet personnel as he came out onto the deck, but when the transfer to the Salvia was delayed, the protective "cocoon of Soviets around Medvid" seemed to melt away and everyone appeared more relaxed.

At approximately 4:30 pm, according to the Border Patrol log, a second small boat took Medvid and party from the Konev. Medvid, accompanied by US and Soviet officials, boarded the Salvia and went directly to the wardroom. By prior agreement, those members of the US group who did not go to the Salvia with Medvid, were transported from the Marshal Konev to shore at that time. A Customs log entry reports "all American officers are off the vessel" (Konev) at 4:37 pm.

f) Aboard the Coast Guard cutter Salvia

Parra was sitting with Hunt when the negotiating teams arrived. Parra said that Hunt made a comment about the long-haired Soviet who he mistakenly thought was Medvid. Parra corrected him, indicating that Medvid was the "young, tall kid" (Parra is 5'7" tall). The Soviet doctor, who preceeded Medvid, had the long hair. Parra described Medvid as being very tense and looking around furtively, as if trying to figure out what he was going to do.

Medvid walked past Worley in a passageway of the Salvia at one point. According to Worley, Medvid wore a sports jacket with one arm in a sling and the jacket draped over that shoulder. He seemed quite alert and walked straight, without any apparent problem with balance or locomotion.

Parra stayed with Hunt in the galley. The BORTAC team was in a room nearby, to one side of the wardroom. Parra entered the interview room once, to retrieve his briefcase, and noted that Medvid appeared to be nervous. Parra remembered that Medvid got sick during the interview and came running out of the room towards the open deck.

Parra recalled that some other Soviets from the small boat tried to board the Salvia to use the restroom and there was a lot of confusion. Parra remembered sitting with the Salvia crew as they ate dinner, while the interviews were in progress. They watched television news coverage of the affair.

Caruthers was present in the wardroom during the interviews. He was asked by Sell to observe Medvid and to keep Sell advised about Medvid's apparent condition, state of mind, and any other factors affecting the validity of the interview results. Brandemuehl's role was to take notes and closely observe all developments, as well as represent INS in any apppropriate immigration actions. Brandmuehl wore a concealed tape recording device during the Salvia interviews, which was later transcribed, and provided an important record of the proceedings. [EXHIBIT #40] Interpreter Ross Lavroff was assigned to translate English into Russian and vice-versa. Sell spoke only in English during the formal questioning.

Lavroff indicated that the Russian language was used during the interview because Medvid was both comfortable and proficient in Russian, and never indicated a preference for Ukrainian. He also stated that Russian was the official language on Medvid's ship and proper for use on this occasion. Sell asserted that, based on his experience, Russian is the official language of the entire Soviet Union and has been effectively installed throughout the Ukraine. Several other DOS witnesses with experience and service in the Soviet Union confirmed that view.

g) The interview with Medvid commences

The parties began talks at approximately 5:00 pm. The Americans sat across the wardroom table from Medvid. Two Soviets sat on either side of him. Sell explained that the Soviets were allowed to attend the interview of Medvid because of the principle of "reciprocity" between the US and the USSR, (i.e. unless the US affords this courtesy to Soviet officials, we cannot insist upon our presence when US citizens face situations under Soviet control).

Soviet Embassy official Igor Bondin was the spokesman for the Soviets and Sell directed the meeting for the Americans. Sell first introduced the American party. Bondin introduced the Soviets. Sell offered snacks and non-alcoholic drinks to all.

Sell explained the ground rules for the talks, stressing that no Soviet would be allowed to speak for Medvid. Sell told the assembled group that he would do all the questioning in English and that Lavroff would translate for both sides.

At this point in the meeting, Medvid suddenly became nauseated and hurried from the room before substantive talks began. He required about thirty to forty minutes to recover. He was allowed to rest awhile in the Salvia sickbay, attended by both Soviet and American doctors.

Between 5:30 and 5:40 pm, Medvid returned to the wardroom and the talks resumed, with assurances from the seaman and both the doctors that he was well enough to proceed.

Some verbal sparring occurred between Sell and Bondin, who both agreed that neither side would "dictate" to the other. They also agreed, at Bondin's insistence, that Medvid could refuse to answer any question he chose, as long as it was his own decision to do so. Bondin stressed that the talks should end just as soon as Medvid's views about remaining in the United States became "obvious."

Sell repeatedly asserted his right to question Medvid and to determine in his own judgment whether Medvid's answers were satisfactory. Sell began again with questions regarding how Medvid ended up in the river and eventually on shore. Medvid's rambling reply explained that he was working on the deck of the Konev, checking the ship's lighting, and then found himself in the water (allegedly accidentally falling off the ship).

Asked about his activities on shore, he said he was in a "state of shock," and had only hazy recollections of being on a "cutter" with a "very large physical person." He denied any recollection of interviews with Immigration Officers or an interpreter. He recalled the "cutter" approaching his ship, with bright lights shining at him. He remembered hearing some shouting, and then he found himself in the water again. He said he remembered waking up in an infirmary bunk aboard the Konev, with his left hand tied to a chair next to the bunk, but with no knowledge of how he got there.

Medvid recalled that his hand "had been cut" and a splint had been applied to prevent him from moving it. He recalled feeling a "slight pain" in the forearm, but had no further explanation of how the injury occurred.

Bondin interrupted the questioning several times, objecting to certain questions as being unrelated to the purpose of the talks, but Sell continued to remind Bondin that he (Sell) alone would determine the course of the interview.

Medvid told Sell he did not recall giving any statement to any American immigration authorities, specifically denying that he ever said he wanted to remain in the US for "moral and political reasons." He denied that he was mistreated when he was back aboard the Konev. He said that everyone aboard his ship was helping him to regain consciousness, but no one mistreated him physically or mentally. He specifically denied that any threats had been directed at him, his family, or others close to him.

Sell finally led up to the most important question. He reassured Medvid that the highest levels of the US Government had authorized him to promise asylum, free of any criminal charges, if Medvid so chose. He assured Medvid that he could walk out of that meeting, protected by the Americans, and never see the Konev or the other Soviets again, if he so desired.

With that prelude, Sell asked Medvid, "Do you wish to remain here in the United States?" According to Sell and other Americans present, all the Soviets, including Medvid, immediately broke into broad grins and sort of sighed with relief. Medvid asked if there were any other questions and Sell replied that it depended upon his answer to this last question.

Medvid sat silently for a long pause without answering (approximately one to two minutes). The length of the pause prompted Brandemuehl to suggest he be given a glass of water. Medvid looked at the water, paused a little longer, and finally stated, "You know, there is a very interesting Russian proverb. It is nice everywhere, but it is best at home."

Undeterred, Sell moved on to other questions, over the strenuous objections of Bondin, who insisted that the talks were over. Sell continued, stating that he understood that Medvid had just told him that he wished to return to the Soviet Union. Sell asked Medvid again if he was really making this decision of his own free will. Medvid replied that he had already answered that question.

Sell and Lavroff specifically recalled that Medvid kept "winking" at them and they could not understand his purpose. Lavroff said he felt that Medvid was trying to send him a nonverbal message that all this talk was "just a game," and that he could not really say what he wanted. However, several statements from other Americans present at the interview sessions indicated that Medvid winked at many of the participants (including the Coast Guard attendants) at various junctures in the proceedings. Other interpretations of this gesture included Medvid's alleged immature or nervous behavior.

After Medvid's unclear answer, Sell left the room to speak privately with Brandemuehl, and the talks were recessed for a time. Sell and Simons conferred with Mark Parris at the Department of State in Washington by speakerphone from the bridge of the Salvia. They discussed Medvid's unsatisfactory answer to the direct asylum question. They told Parris of the nausea Medvid had experienced in the early proceedings and his seeming disorientation upon his return to the wardroom. Coast Guard officers present on the bridge of the Salvia overheard both ends of the radiophone conversations. Lt. McEntire recalled that the discussions included: a) a review of Medvid's rights under standing consular agreements, b) the anger of Soviets present at the talks, c) Medvid's apparent desire to return to the USSR, and d) a concern that Medvid needed rest and a fresh opportunity to express his wishes.

Sell and Leupp called Parra into the Captain's quarters for consultation. Parra told CSCE investigators that Sell told him they had decided to take Medvid off the Salvia. Sell said that Medvid had stated he wanted to return to his ship, but Sell was still unclear about the spontaneity of Medvid's answers because of three factors: a) Medvid's winking at them during the discussions, b) Medvid's long pause prior to answering the critical question regarding asylum, and c) the elliptical answer Medvid had finally given them.

Parra recalled hearing the medical doctor speaking with the psychiatrist about Medvid's infected arm. Supposedly, the Konev had run out of medical supplies and the Soviet doctor had no way to treat the arm. Parra relayed this information to Sell. He explained to Sell that the INS District Director could "parole" an alien into the United States for medical treatment for up to a year. Parra showed Sell the necessary forms and quoted the relevant section of immigration law. He pointed out that the provisions of the law were intended purely for humanitarian reasons. In this case, Parra felt it could be utilized to treat Medvid's injury.

Parra said that Sell seemed particularly concerned about keeping Medvid in the country for a longer period of time, so that Medvid would have ample time to make a rational and free decision. Parra believed that another call to Washington may have been made at this point in time. The decision was definitely made to "parole" Medvid into the United States and Parra completed the I-94 form, certifying the parole process, later that day.

Prior to 7:00 pm (based upon the log entries of several agencies), John Whitehead, Deputy Secretary of State, Washington, DC was alerted to recommendations that Medvid needed overnight rest and an opportunity for further interviews. Whitehead conferred with Admiral John Poindexter, who reportedly consulted with President Reagan. The DOS log confirms at 7:10 pm that Whitehead had "made a decision to have Medvid taken from ship to Navy Bachelor Officers Quarters," because of his delayed and evasive answer, "home is best."

State's witnesses, including Palmer, said they were convinced that President Reagan personally consented to detaining Medvid overnight, even if it required using necessary force to accomplish that end. At least one witness, Robert McFarlane, believed that he and Secretary Shultz, Attorney General Meese, and perhaps Don Regan discussed this matter with the President in the oval office.

Aboard the Salvia, there were lengthy delays (while more telephone calls were made) and an entry in the INS Central Office log indicates a "touchy situation" existed at 7:50 pm. [EXHIBIT #41]

Bondin went to shore and then returned to the Salvia at about 8:15 pm, reportedly after calling his Embassy. He persisted in his refusal to allow Medvid to be taken into American custody or submit to additional talks.

Sell told Bondin that US authorities had decided that Medvid's "elliptical albeit positive" answers to Sell's questions were *not* satisfactory and Medvid was to be removed to shore. Sell said that Medvid would remain overnight at a US Naval facility. If he still voiced a desire to return to the USSR in the morning, and would sign a statement to that effect, he would then be released to the Soviets.

Bondin turned to Medvid during this exchange and demanded that Medvid give the Americans a clear answer to their asylum question. In response to Bondin's prompting, Medvid asked Sell if he (Medvid) could return to his ship. But Sell said that such an answer under orders from a superior was not clear evidence of a desire for voluntary return and could not be accepted.

Bondin was outraged. He promised that the strongest possible protest would be filed by his Government about the incident. He cursed the Americans, and insisted that "the Soviet citizen will return to the Soviet vessel tonight!" But Sell responded, "That will not happen!" He gave Bondin two options: a) return to the Konev without Medvid, or b) accompany Medvid and the Americans to the Naval base.

Additional angry exchanges followed. Bondin repeated his demands for Medvid's release. Brandemuehl served Medvid with an INS Form I-281 (Notice to Prevent Departure), witnessed by both Sell and Lavroff, and explained its meaning to him. [EXHIBIT #42] Sell alerted the BORTAC team to be prepared to overcome the anticipated resistance of the Soviets.

At 8:40 pm (INS and DOS logs), the Soviets were still resisting removal of Medvid and insisted that they all be allowed to return to the Konev.

At 9:00 pm (DOS log), Parris recommended to Palmer that Sell and Simons again be specifically authorized to take Medvid by force, if necessary. The notation "Palmer authorizes use of force," appears in that entry. Parris instructed Simons to: a) repeat to the Soviets the invitations for them to accompany Medvid to shore, b) seek Medvid's willful assent to go to the Naval base and c) take him anyway, if he does not agree to go.

The passageway of the Salvia was L-shaped; the Chief Petty Officer's mess at one end, and the room in which Medvid was being questioned (wardroom) in the bend of the corridor with two doorways leading into it. Four uniformed BORTAC agents lined up outside one wardroom door. Mandel and Worley stood at the other doorway. Finally, Sell gave Bondin an ultimatum to make his decision in two minutes regarding accompanying Medvid or returning to the Konev without him. Then Sell opened one of the wardroom doors to reveal to Bondin the uniformed officers standing in the passageway outside.

It was at 10:00 pm (DOS log) that Bondin and Kosov decided the Soviets would peacefully accompany Medvid to the Naval base in Algiers.

h) Removal to the Naval base

Two vessels were used to ferry the groups from the Salvia to shore. The first boat carried the four BORTAC agents, Brandemuehl, Sell, Caruthers, Hunt, two Soviet Embassy personnel, the Soviet Captain and Medvid. A second boat followed carrying others. They headed toward a landing dock a few miles upriver. This dock was closer to the Naval base and had been selected primarily to avoid news media personnel. One small boat returned for the remaining agents.

The Naval Support Activity in Algiers was chosen as an interview site because: a) it had adequate rooms available in the BOQ (the Belle Chasse Naval Air Station nearby was at that time renovating its BOQ), b) it was reasonably close to the Konev, and c) it had good perimeter fencing and gates to protect the party from reporters and crowds.

INS and Border Patrol log entries reveal that the White House Situation Room (National Security Council) was advised at 10:30 pm of the move to the Naval base, and at 11:39 pm, gate guards advised that the Medvid party was securely on the base.

11. THE BOQ INTERVIEW

a) Arrival at the BOQ

US Navy Captain Claude Fare, the Commanding Officer at the Naval Support Activity (NSA) in Algiers, LA [EXHIBIT #43] on October 28, 1985, recalled in an interview with CSCE investigators that he received a telephone call from a local Coast Guard officer late that day requesting assistance for a party of American and Soviet negotiators involved with a potential Soviet defector. He was asked to assist with local transportation and provide overnight quarters for the group, which anticipated a departure from the base by 9:00 am the next day. Fare confirmed matters with Naval headquarters in Washington, DC, and then made appropriate arrangements.

An entire wing of the base Bachelor Officers' Quarters (BOQ) was cleared so that the party could conduct its business without interference. NSA personnel were assigned support functions, including the preparation of meals for the party, housekeeping, and basic security.

Although expected several hours earlier, the vehicles carrying the Medvid party arrived around midnight. The principals left their cars and went directly to the BOQ, where rooms were assigned to key persons. The others waited and rested as best they could in the main lounge of the BOQ, known as the "Crescent Room."

The assigned rooms actually comprised a wing of the BOQ considered to be the Admirals' suites. Each suite had a doorway which led from the corridor into a living room, with another doorway leading from the living room into an interior bedroom and adjoining bath.

Under the ground rules agreed upon by US and Soviet officials, no one was to accompany Medvid while he was in the confines of his bedroom or bath. Border Patrol officers objected to this restriction from a security standpoint. They were apparently concerned about Medvid's reported suicide attempt and insisted that someone be present when he shaved. As a result, they were allowed to move their agents to the end of the corridor where they had a line of sight into his room.

The ground rules also provided that the number of US officials present, whenever Soviets were with Medvid, must always equal or exceed the number of Soviets in the room.

State Department officials took the suite directly across the hallway from Medvid. The Soviets were in a room next to Medvid's and Caruthers was situated in another room across the hall from the Soviets.

By the time Worley arrived at the BOQ, the first group was in their rooms, security had been posted and Caruthers had begun conducting a much closer examination of Medvid's lacerated wrist. Worley stated that a medicine chest from the hospital had been brought over to the room. Worley was told by one of the BORTAC agents that (while at the BOQ) Medvid had made a gesture to grab some scissors, but Brandemuehl or Caruthers had removed them before Medvid got them in his hand.

Worley said that he and others were concerned that Medvid's room should be cleared of all dangerous items, but if Medvid had wanted to harm himself, opportunities and objects to do so were available to him. The room was not "sterilized," in order that a comfortable atmosphere could be maintained for Medvid's recuperation and relaxation. Worley clarified that he did not believe Medvid made any overt attempts to harm himself while at the BOQ.

Caruthers told CSCE investigators that his contact with and examination of Medvid after arriving at NSA, further confirmed that Medvid was healthy. Caruthers found no good reason to object to further interviews by US officials. The wrist wound was not serious, although there was mild infection of the laceration which was treatable with simple medication. He recalled that Medvid childishly resisted examination and medication of the wrist wound until the Soviet doctor persuaded him to let Caruthers treat it.

Ross Lavroff was present during all examinations and interviews of Medvid. He confirmed Medvid's childish resistance to medical examination and treatment by Caruthers.

Hunt told investigators that he had two "talks" with Medvid at the BOQ. He explained that his first talk with Medvid, upon arriving at the BOQ late Monday night, was intended to relax Medvid and build his confidence in Hunt.

Hunt recalled that Medvid seemed "troubled" and "off guard" during the first session. Hunt showed him a copy of the handwritten note on the envelope which Wayne Wyman said Medvid had written on the evening of October 24. Medvid denied any knowledge of the envelope or its message, and denied any memory of a telephone discussion with Irene Padoch. He became quickly annoyed with Hunt's questioning. Hunt said he would not have been surprised if Medvid had physically hit him.

Hunt's second talk with Medvid took place the next morning, on October 29, between 8:00 am and 9:00 am and was more formal. The interview became adversarial and Medvid again seemed to resent the questions. He threatened to stop talking until his Embassy gave approval and at one point he stormed out of the room.

Certain conclusions were drawn by Hunt about Medvid. He decided that Medvid was immature and impulsive by nature, that Medvid had definitely decided that he wanted to go back to the USSR, and that Medvid resented the persistent questioning. Hunt stated that Medvid had become belligerent towards the US and repeatedly criticized certain aspects of American society and American products. This seemed to be an attempt to reinforce Medvid's contention that he had never wanted to defect to this country in the first place. Hunt also concluded that Medvid, during the BOQ interviews, was rational and competent to give his own responses to asylum questions.

In fact, Hunt opined, Medvid seemed to become increasingly aggressive, as if he began to see himself in charge of the situation. He became obviously more "chummy" with the other Soviets present. Simons remembers asking Hunt, during the final deliberations on whether or not to release Medvid from the BOQ, if the doctor felt that Medvid would now even accept asylum if US officials insisted. Hunt replied that he believed Medvid would resist and would not go willingly with US authorities in his current state of mind.

Worley observed Medvid most of the night. He stated that Medvid drank a lot of Coca Cola, seemed to be entranced by the television, and was excited by news about himself. Worley recalled that Medvid saw a news segment showing the Soviet contingent walking off the ship. Medvid clearly knew that he was the center of attention. The Americans finally had to unplug the television set, in order to get him to go to bed.

It was well after midnight when Medvid retired. Jim Thessin and one of the Soviets stayed in the sitting room all night, just outside Medvid's bedroom door. Medvid was alone in his bedroom. A Border Patrol guard maintained security in the hallway outside Medvid's door.

Medvid was awakened at 8:00 am on Tuesday, October 29, 1985 and received final examinations by the US doctors. Worley remembered that Medvid came into the living room with his sling on the wrong arm. Medvid had been watching Donald Duck cartoons on television and seemed oblivious to his mistake. When he reached for cigarettes on the table, he seemed to realize that he had the sling on the wrong arm, jumped up and ran to the bedroom, returning with the sling on the other arm.

At 9:00 am on Tuesday, another interview session was convened by Sell. He asked additional questions about Medvid's intentions and received the same answers. Medvid repeatedly stated that he wanted to return to his home in the USSR. He became increasingly agitated and annoyed with the Americans and insisted on being released.

b) A call to the original interpreter

In New York City, at approximately 10:00 am (EST), Mrs. Irene Padoch received a telephone call from a man who asked her if she was the original translator for Miroslav Medvid. The caller said he was "with Medvid" in New Orleans. Padoch also recalled being told that two doctors (one of whom was a psychiatrist), a Department of State official, a Russian interpreter, and four Russian observers were also "with Medvid."

The caller suggested to Padoch that it might be better if she conversed in her own language (rather than English), which surprised her. The caller then handed the telephone to a second party who began speaking very rapidly in Russian. She did not understand what he was saying, so she stopped him and asked if they could talk in English. He seemed to be speechless, apparently having assumed that she spoke Russian. At the end of the conversation, the person on the line said goodbye to Padoch in Ukrainian, in such a way that she concluded he did not speak Ukrainian often.

Lavroff told CSCE investigators that Sell placed the aforementioned telephone call to Padoch, then handed the telephone to him. He was surprised to find that, in his opinion, Padoch spoke neither English, Russian nor Ukrainian very well. He remarked that "she made almost no sense to me." Lavroff's affidavit [EXHIBIT #44] indicates that he believes Padoch did not really understand Medvid's situation during her first telephone call translating for Medvid and Spurlock. He believed that Padoch must have done a poor job of interpreting and failed to find the appropriate words to clarify to either Medvid or Spurlock the things they both needed to know.

In the call to Padoch from the BOQ, the telephone was apparently passed between different parties. Padoch was never sure who was speaking to her. At one point, someone she believed to be the attending psychiatrist began a very professional sounding discussion, asking for her impression of Medvid. She told him that she had never seen Medvid and asked what he meant by the question. He asked if she thought it was possible that Medvid "just fell off the ship." She could not believe it. She told the caller that even Spurlock had realized that Medvid had jumped from the ship.

Padoch remembered the caller suggesting that when Medvid spoke to her that first night he may have been talking too fast. The caller also suggested that Medvid's jump from the ship "was just an impulse." His observations of Medvid were that he was talkative, arrogant and psychologically immature. This revelation shocked Padoch and caused her to remain silent.

Irene Padoch told CSCE investigators that she was offended by the call. Her impression of Medvid had been completely the opposite of the person the caller was describing. She believed Medvid had been very direct and to the point, and knew what he wanted. Asked why she thought the jump from the Konev was not an impulse, Padoch replied that Medvid apparently "had something with him" (in reference to the papers he carried).

The caller from New Orleans told Padoch that Medvid had been given drugs, but had slept well the previous night at the BOQ. He felt Medvid was properly rested properly and looked as though he could make a decision "freely." Padoch really began to wonder if they were talking about the same person. She did not ask to speak with Medvid and no one suggested it to her. Mrs. Padoch was also told by the caller that Medvid had said something about the Soviet Union being superior to the United States. She did not understand why they were telling her such things. The telephone conversation lasted about 15 minutes.

c) The final Medvid interview

At the final interview in the BOQ, early Tuesday afternoon, October 29, 1985, Worley and Thessin were present and heard the conversations with Medvid. They recalled that Medvid was asked how he had gotten from his ship to the shore. Instead of simply answering the question, he gave a long dissertation about his job description, explained about making final rounds on the deck of the ship, what his activities included, and so forth. Then he began talking about a deck light that looked funny to him and was possibly burned out. He stated that he leaned over for a closer look. He told the interviewers that suddenly he was in the water, in the dark, and could see the glow above him from the lights on the ship. Medvid said that every sailor knows that if you swim into the glow, you will die, so he swam into the darkness. The next thing he recalled, he was in the Konev infirmary. When asked to repeat some of the details of this event, Medvid became very belligerent and said he was tired of being asked about it.

Sell asked Medvid several more times about his wishes to stay in the US. Medvid's response to this question was always simple. He stated that he was a Soviet citizen, he was proud to be a Soviet, he had family in the Soviet Union and he wanted to go back. This final interview "went on and on," in Worley's words. He remembered that Sell offered asylum to Medvid many times.

Everyone at the BOQ session was growing very weary. Medvid was petulant, irritable and increasingly authoritative towards those around him. The Americans grew uneasy with Medvid's childish behavior and his repeated verbal assaults upon American society.

Sell explained to CSCE investigators, as did Palmer and others, that he felt the longer the incident lasted, and the more difficult the problem became for the Soviets, the more severe Medvid's potential punishment back home would be. They said they also believed that Medvid was keenly aware that his defection could cause harm to his family.

d) The decision to honor Medvid's request

Telephone calls between the American officials at the BOQ and their Washington superiors resulted in official concurrence from "the highest levels of government" to let Medvid return to his ship. INS log entries at 1:35 pm confirm that President Reagan was consulted for permission to release Medvid. Sell, Simons, Parris, Palmer, McFarlane and Matlock all stated that, on the basis of all available facts, the President specifically agreed to Medvid's release.

Robert McFarlane recalled that President Reagan was very disappointed about Medvid's decision. However, State Department, National Security Council and White House officials all agreed that every reasonable step had been taken to insure Medvid a free choice. The only reasonable course of action left was to let Medvid go back to the Konev, as requested, as opposed to holding him in the US against his own will. The President concurred. Sell received instructions to get Medvid's signature on a statement of intent and then release him.

Medvid acted as if he had triumphed over the Americans. When the US negotiators began reviewing the specific wording of the statement with him (in English and Russian), Medvid objected strenuously to several words. Sell felt the objections were frivilous. Lavroff, Hunt and others believed that Medvid was insisting upon specific wording to signify that he had *never* sought to stay in the United States.

Lavroff overheard Medvid say to the other Soviets present (in Russian), "Well, should I stop beating them up now?" just before he signed the statement. Lavroff believed that Medvid was posturing for the Soviets, pretending that he was in charge and that he had been "beating up" emotionally on the Americans. Even the Soviets present appeared totally disgusted with Medvid at this point, as indicated by their demeanor. Medvid made a grand gesture of signing the statement. Lavroff and Hunt clearly recalled Medvid pressing his thumb firmly on the paper, near his signature, in a gesture of finality, and saying in Russian (according to Lavroff), "There, that makes it official," or words to that effect. He did this on both the English and the Russian translations of his statement. [EXHIBITS #45 and #46]

Arrangements were then made to return Medvid to his ship. Even then, just before Medvid actually stepped off the Coast Guard boat onto the Konev gangway, Sell again asked him if he would like to change his mind. Sell promised again that Medvid would be perfectly safe if he chose to stay in the US. Medvid declined and boarded the ship at approximately 5:30 pm on October 29, 1985.

12. THE SENATE SUBPOENA

The dramatic Medvid events were closely followed in news accounts by many Americans, especially those of Ukrainian background, and many others with a special interest in US/Soviet affairs. Concerned citizens lobbied heavily to ensure that their elected representatives worked for Medvid's chance to "live in an honest country." Many US Senators had both an official and personal interest in the matter, which grew as time passed. When the State Department announced on October 29, 1985 that Medvid was finally being released to the Soviets and declared that the "case is closed," some of those Senators were outraged and quickly began to explore their options. Senator Helms was shown on television allegedly expressing the sentiments of many of his colleagues. He said he felt the US government had doomed Medvid to a terrible fate by giving him back to the Soviets. Robert McFarlane clearly remembered that word reached President Reagan and top Executive Branch officials that Senator Helms "and a significant number of other Senators are mad as hell" (about the decision to return the seaman).

a) The Agriculture Committee subpoena

Terry Wear, a staff counsel to the Senate Agriculture Committee, told CSCE investigators that his boss, Senator Jesse Helms (NC), Agriculture Committee Chairman, as well as Senators Dole, Humphrey, McClure and others, were adamant about preventing the Soviets from taking Medvid back.

Several Senators decided that Medvid should be summoned to appear in person before them, thus assuring he would have "more time to decompress." Dr. James Lucier, then Chief Legislative Assistant on Senator Helms' personal staff, remembers that their main purpose was to prevent Medvid's deportation. They had been deluged with angry calls demanding that they attempt to save Medvid.

CSCE investigators learned during an interview of Lucier and several others of Senator Helms' staff, that some individuals believed INS "had an institutional bias to get rid of aliens." INS had been described as "bureaucratic and rigid," and had neither the "mentality nor methodology" for such sensitive cases as Medvid.

Helms' staff related their disappointment at Medvid's eventual repatriation. They had maintained contact with a group of Ukrainian-Americans who were prepared to provide Medvid with housing, airfare, legal counsel, medical care, religious counselling and other "stabilizing" assistance.

Wear recalled that Senator Dole's plan to obtain a subpoena, issued by the Senate as a whole, was moving slowly and Senator Helms feared it would not succeed before the Konev departed US waters. Senator Helms decided to exercise his own subpoena authority as Chairman of the Senate Agriculture Committee, so he initiated action to secure Medvid's appearance before that Committee.

Lucier prepared a memorandum for Senator Helms which outlined both the Committee's authority and the factual basis for Agriculture Committee jurisdiction over the Konev and its crewman, Miroslav Medvid. [EXHIBIT #47] The memo asserts the Committee's right to "study and review, on a comprehensive basis," matters related to its legislative jurisdiction; in particular, "the practical conditions under which the grain trade is carried out" pursuant to the US/USSR Long Term Agreement signed on 8/25/83.

The Lucier/Helms memorandum poses the question of whether alien crewmen within US territory, " . . . must be denied the protection of the US Constitution?" or whether they " . . . have the protection of basic human rights while in US waters?" It cites allegations of improper conduct by INS, DOS and other US officials and employees, and expounds the opinion " . . . that Mr. Medvid was denied due process under the US Constitution, that he was denied equal protection, and that his basic human rights were violated." The memo concludes with a statement that "Mr. Medvid's appearance before the Committee is essential to obtain a balanced view of the facts in the case."

Wear remembered toiling for two days on details of the formal subpoena process, including translations into both Russian and Ukrainian by the Library of Congress and contacts with the US Customs Service to secure their assistance. He spoke to Customs

Commissioner William von Raab by telephone on or about November 5, and was assured that von Raab's staff at New Orleans would give complete cooperation and assistance. Wear assumed he would have help in getting to the Russian vessel and serving the subpoena, and could rely upon Customs to deny clearance for the Konev's departure.

Commissioner von Raab recalled for CSCE investigators that Senator Humphrey contacted him "a day or two" after Medvid went back to his ship (October 30 to November 1, 1985), asking whether Customs could prevent the Konev from leaving the US by denying departure clearance. Von Raab found that clearance could be denied "for safety reasons," as well as for "any unfinished business" in the US. He specifically instructed New Orleans Regional Commissioner Robert Grimes to take no action (neither grant nor deny clearance) but to keep him posted.

Senator Helms also called von Raab, with the same request as Senator Humphrey, and von Raab again promised to "do what he could."

Von Raab remembered learning from Treasury Department General Counsel Robert Kimmitt that Customs could also deny clearance to the Konev based solely upon the knowledge that a Senate subpoena existed. Kimmitt had no clear recollection of that specific point, but said his staff did research and discuss the issue with Customs, Justice and DOS. They concluded that Customs authority was limited to clearance matters only and he could not recall that they took any position on extending that authority to include subpoena enforcement activities by Customs.

Von Raab said he learned later that all Executive Branch responses to the Senate subpoena would be determined at the White House level and he sent Assistant Commissioner Bill Rosenblatt to represent him at a meeting called by Admiral John Poindexter.

b) The White House meetings

Several senior administration officials recalled attending and/or receiving verbal reports from interagency meetings held at the White House Situation Room, called and chaired by Poindexter. The first meeting occurred on November 7, 1985 as Senate staffers were enroute to New Orleans to serve Medvid. Key attendees were Abraham Sofaer and Rozanne Ridgway (State Legal Adviser and Assistant Secretary, respectively), Alan Nelson (INS Commissioner), Bill Rosenblatt (Customs Assistant Commissioner) and White House staffers Fred Fielding (Counsel to the President) and Larry Speakes (Acting Press Secretary). The main issues discussed were: a) how to enforce an order to detain the Konev, in the event the Federal District Court in New Orleans granted the injunction being sought by a private group on Medvid's behalf, and b) how to respond to the Senate subpoena. [EXHIBIT #48]

The subpoena was strongly opposed by State and Justice, on legal, procedural, foreign policy and practical grounds. Justice basically supported the State position, but was instructed to research the subpoena issue and determine Executive Branch responsibilities. Fielding told the group that President Reagan, though greatly disappointed at Medvid's decision, felt all reasonable options had been exhausted.

Rosenblatt noted that it seemed "foolish" to release the ship until all US agencies were satisfied about Medvid's welfare. But a Treasury spokesman pointed out that Customs authority in the Medvid matter seemed limited to the clearance issue, and that a more "overriding reason" would be required for Customs to deny clearance. Certain classified State Department documents (discussed in greater detail in the separate classsified report), revealed that the DOS sought President Reagan's leadership in this matter and requested that he instruct all agencies to refrain from supporting the Senate subpoena effort. Although investigators found no specific record or statement evidencing a direct order from the President, Poindexter reportedly instructed participants at the White House Situation Room meetings "not to assist, but also not to interfere" with the Senate subpoena process.

Thus, Customs emerged from the meeting with instructions to extend courteous assistance to Senate staffers, but allow no Customs personnel aboard the Konev and refrain from any actions to serve the subpoena or detain the ship.

Poindexter chaired a second and third meeting in the situation room on Friday and Saturday, November 8 and 9, 1985 but the details of those meetings are sketchy. Apparently, some of the original attendees were joined by new ones and Justice presented more legal opinions, further bolstering State's position. Primary results of these follow-up meetings reportedly included a determination that the Helms' subpoena was inappropriate and invalid, requiring no Executive enforcement or support because of a) a failure to issue it in accordance with standing rules and procedures of the Senate, b) a failure to personally serve Medvid with the subpoena, and c) the absence of a formal request for Justice Department assistance.

[It must be noted that CSCE investigative efforts to gain access to all White House witnesses and records regarding the Medvid matter were only partially successful, although the primary players and their actions have been identified.] Deputy Counsel to the President, Jay Stephens, wrote to CSCE staff to deny access to some potential witnesses, citing Executive Privilege. [EXHIBIT #49] He also denied investigators access, on the same prerogative, to most records of the National Security Council and meetings and/or deliberations which occurred in the situation room or involved any White House staff members.

NSC attorneys did furnish a copy of Presidential Directive 27 (PD 27), which has been previously released to the public, which was cited by Customs attorneys and others as the basis for State Department leadership in the Medvid affair. [EXHIBIT #50] This document directs executive branch agencies to coordinate, primarily through DOS, all "nonmilitary incidents" which have foreign policy implications.

Admiral Poindexter's attorney, Richard W. Beckler, wrote to the CSCE project director and formally declined his request to interview the Admiral. [EXHIBIT #51] This refusal denied investigators access to the a figure in (and therefore the best source of information about) both formal White House meetings and informal discusssions concerning the Executive Branch's position on the subpoena.

The Medvid investigation unfortunately coincided with other congressional and criminal investigations making it highly unlikely that the Medvid information could be obtained within the lifetime of the CSCE investigation.

Former NSC Soviet Affairs chief Jack Matlock (now US Ambassador to the USSR), attended White House meetings but stated that he took no substantive role and could not furnish details of those proceedings. Matlock remembered no documents being generated at the NSC regarding the Medvid affair. He said they dealt with the matter mostly in verbal briefings and telephone calls. He doubted there was much, if any, recorded evidence of Poindexter's or other White House staffers' activities. Matlock's information confirmed, but did not expand upon, the statements of other witnesses about the purpose, participants and results of Poindexter's meetings.

Other witnesses concurred that no specific documents or records were generated at the White House sessions. McFarlane did not recall attending any Situation Room meetings regarding Medvid. His activities apparently consisted mostly of keeping himself informed through talks with Poindexter and/or Matlock and, on several occasions, conferring with President Reagan.

McFarlane and other witnesses reminded CSCE investigators that, as important as the Medvid events were to the President and other decision-makers at that time, many other vital issues constantly competed for their time.

c) Attempts to serve the subpoena

On the morning of November 7, 1985, Terry Wear alerted Dave Sullivan that Senator Helms was signing the Agriculture Committee subpoena and wanted Wear and Sullivan to immediately serve it on Medvid. They flew to New Orleans that afternoon and were met by Customs official Joel Mish. Mish provided courteous assistance, as ordered by his superiors, but reportedly did not relish being involved in the controversial situation.

When Sullivan and Wear discovered that arrangements for translators and witnesses had not been made as anticipated, they used airport Customs office phones to locate translators, for both Russian and Ukrainian languages, through the local Berlitz school. They also called Joe Wyman, who joined them at the airport.

Wear was greatly annoyed by the delay and by Mish's statement that he could provide only minimal assistance with the subpoena efforts. Wear reached Commissioner von Raab by phone and learned that von Raab had been "outranked" and ordered by "the White House" not to assist directly with the subpoena and not to deny clearance for the Konev's departure. Sullivan learned later from Lucier (and other Helms' staffers in Washington) that they believed Judge Sofaer had succeeded in blocking their subpoena plan. Commissioner von Raab stated to CSCE investigators that his instructions on this point probably came from Bob Kimmitt (Treasury Department General Counsel).

The Konev was docked at the Cargill grain elevator at Reserve, LA, upriver from New Orleans [EXHIBIT #52], when Wear and Sullivan arrived. They boarded the Konev after 10:30 pm and the Captain met with them in his quarters for about 15 minutes. He denied their request to see Medvid and would not accept the subpoena for him. He insisted that they wait for a Soviet Embassy official, who was enroute from Washington.

Joseph Wyman related basically the same story as Wear, about events at the Konev that evening. He said he arrived at the Cargill grain elevator in Reserve as late as 11:30-12:00 pm on Thursday, accompanied by Wayne Wyman, Wear, Sullivan, (St. John's Parish) Sheriff Johnson and deputies, the two interpreters, and some Customs agents. He remembered when Wear and Sullivan left the ship, they held a news conference. Mish went to call his superior, while Wear and Sullivan called Washington.

According to Wyman, the "Customs guy (Mish) had it out several times with Wear and Sullivan." At one point, Mish apparently overheard Wear and Sullivan on the phone complaining to their boss that Customs was not cooperating with them. Wyman believed this led to one of their disagreements.

Wear and Sullivan stayed in New Orleans overnight and returned to the Konev, as agreed, late the following morning. Upon their return, they were met at the gangway by a tall, "athletic-looking" Soviet Embassy official, later identified to them as a former Olympic athlete and suspected KGB agent, whom Wear named as Yevgeniy G. Vtyurin, Second Secretary and Consul of the Soviet Embassy. He was described by witnesses as extremely suave, fluent in English, and obviously a polished diplomat.

Mish and Wyman both related that they decided at once that Vtyurin would not be persuaded or deceived. They were impressed by his courteous but authoritative manner.

Vtyurin refused to allow any of the Americans on board the Konev. He refused to accept the subpoena. Vtyurin, Captain Tkachenko and other Soviets from the ship finally joined Wear and Sullivan on shore for a meeting in the conference room at the Cargill company. They called superiors in Washington, sent out for snacks and talked for three or four hours.

While the talks commenced in the Cargill offices, Wyman and others, including Mish, waited near the dock, watching the Konev. Several Soviet crewmen and women gathered near the railing to watch events on shore.

Mish and the Ukrainian interpreter waited together and Mish sent for food for the group. Wyman said that Mish kept looking at his watch. At one point Mish told him they were "not going to get him (Medvid) off. The ship is sailing tomorrow." Wyman asked Mish how he knew this and was told only that the Customs agent knew that the ship was sailing.

Wear told Wyman that the subpoena was valid if Customs honored it, because Customs had to give clearance for the ship to leave. Wyman advised Wear about Mish's earlier comment, and Wear said that the decision to allow the ship to leave had not yet been made.

Vtyurin steadfastly refused to accept or allow for service of the subpoena on Medvid. However, the Americans finally secreted copies of the Medvid subpoena in a carton of Marlboro cigarettes and presented the cigarettes to Captain Tkachenko. Wear told investigators that he believed the delivery of the subpoena to the Captain of Medvid's vessel, an official with total control over the person of Miroslav Medvid, constituted constructive service of the subpoena.

Wear and Sullivan were jubilant about their apparent success, leaving the scene satisfied that they had effectively served Medvid and believing that Customs would now detain the Konev until Medvid was produced. They were as yet unaware of decisions in Washington to refrain from enforcement actions regarding the subpoena.

The Konev weighed anchor and departed from Reserve, LA, on Saturday, continuing downriver past New Orleans and out to the Gulf. Mish had completed the usual clearance papers, as instructed by Customs headquarters. US Department of Agriculture inspectors who were on board were ordered off the vessel by theirsuperiors, to expedite the Konev's departure.

The Soviet Embassy official, Vtyurin, requested permission from Mish to ride aboard the Konev to the Gulf of Mexico, in case of other incidents. Mish denied permission, because Vtyurin was not on the ships' passenger list.

The Coast Guard provided a safety and security zone around the departing Konev, to avoid problems with other boats in the area. One small boat carrying signs identifying it with "STOP" (Save the Oppressed People) tried several times to get close to the Konev, but Coast Guard vessels kept it away. It followed the Konev part of the way to the Gulf before it had to stop for fuel and was left behind.

There were no further incidents and the Konev left US territorial waters on Saturday afternoon, November 9, 1985.

B. Factual Issues

In the wake of the Medvid incident, numerous questions arose concerning the overall handling of the matter by US officials. While many of the points dealt with possible legal infractions by US officers, several factual issues were also postulated, based upon conjecture and suspicion.

The CSCE investigation attempted to resolve as many of the factual issues in the Medvid case as possible based upon interviews of the participants in the affair, together with documentary and physical evidence. In particular, close scrutiny was given to: allegations of collusion between US and USSR officials to forcibly repatriate the young seaman; the issue of whether drugs were administered to Medvid and, if so, the extent such drugging may have had upon his decision to return to the USSR; the particular circumstances under which Medvid was interviewed by US officials; and, allegations that the man interviewed by US officials was a Soviet imposter.

1. ALLEGED COLLUSION BETWEEN US/USSR OFFICIALS

Throughout the investigation, Commission staff encountered allegations of collusion between US and USSR officials in the handling of the Medvid case. After careful examination, investigators found that each of these allegations originated from interested parties, rather than individuals with direct knowledge of official handling of the case, and were largely based upon speculation.

[CSCE investigators obtained access to certain classified documents which relate directly to the Medvid incident. Since the evidence is classified, the discussion of the evidence must similarly be restricted and is being presented to Congress in its entirety under separate cover. However, edited unclassified portions of the text appear in the following section.]

a) Alleged Conspiracy to Prevent Medvid Defection

During the investigation, staff examined several theories of an alleged conspiracy between US and Soviet officials to prevent Medvid from defecting. The most prevalent theory is that Medvid's initial flight from the Konev was detected by his Soviet shipmates and reported by the Captain to the Soviet Embassy in Washington, DC. The allegation contends that Soviet officials instructed the Captain to go ashore, find Medvid, return him to the ship, and drug him. Sources further allege that the Soviet Embassy then contacted the US Department of State and arranged for the return of the seaman. To support these allegations,sources cite: alleged intercepted Soviet Embassy communications; alleged DOS telephone calls and instructions to Spurlock during Medvid's processing at Border Patrol offices; and the Department of State's failure to keep Medvid long enough to ensure conditions favorable to his exercise of free choice.

Joe Wyman, the Belle Chasse jeweler who initially encountered Medvid, is the primary proponent of the conspiracy theory. When interviewed by CSCE staff, Wyman admitted that his information was based largely upon comments by David Sullivan, Legislative Aide to Senator Jesse Helms. Wyman met Sullivan at the Cargill Grain Elevator when Sullivan and Terry Wear attempted to serve the Senate Agriculture Committee subpoena on Medvid.

In a subsequent interview with Sullivan, investigators learned that Sullivan had made several comments in conversation with Wyman, but his information was based primarily upon news accounts. He could furnish no independent confirmation of the allegations.

The conspiracy theory is also said to be supported by Patrol Agent Spurlock's actions on the evening of October 24, 1985. Again, the chief proponent of the theory is Joseph Wyman, who claims to have met secretly with Spurlock on several occasions.

In an interview with CSCE staff, Joseph Wyman stated that he had been told by Ernest Spurlock in one of their early meetings that, "I did my job. If they try to burn me, I'll burn the State Department and INS." Wyman interpreted the comment to mean that Spurlock had been told (ordered by higher US authority) to return Medvid to the ship and that he was not going to be made into a scapegoat. When interviewed by investigators, Spurlock admitted to meeting with Wyman on one occasion but denied that there was any conspiracy to return Medvid to the Soviets.

Wyman contends that Spurlock received a telephone call, presumably from the State Department, instructing him to return the Soviet seaman to his ship. Wyman maintains that as a result of these instructions, Spurlock ignored the interpreter, who claimed that Medvid wanted asylum, and disregarded INS procedures for "immediate action" cases. [See Part I(B)(4)(a)(iv) for additional comments on Wyman's allegations.]

The alleged DOS calls were adamantly denied by all witnesses questioned on that subject, including Spurlock, Bashaw, Palmer, Parris, and Sell. The Border Patrol Radio Log, which notes all incoming calls at the Border Patrol Sector Office, makes no reference to any such transmissions. Long distance telephone records to prove or disprove the point were sought but were found to be unavailable, and may never have existed, according to General Service Administration and telephone company officials consulted.

The issue of Spurlock's alleged disregard of INS "immediate action" case regulations, and the "willfulness" aspect of Spurlock's and Bashaw's failure to follow them, was explained by Spurlock who has stated repeatedly that he did not believe Medvid was requesting asylum. Therefore, he followed normal processing procedures for deserting crewmen and returned Medvid to his ship. The resolution of this issue hinges upon the unrecorded telephone call between Spurlock, Padoch and Medvid, and may never be fully resolved.

Allegations that the State Department attempted to repatriate Medvid without a reasonable opportunity for him to express free choice are similarly unsupported by investigative findings. Evidence disputing this point is found primarily in the number and nature of contacts between US officials and Medvid, in which Medvid was given the opportunity to indicate a desire to stay in the US and failed to do so. Witnesses stated that from the time Medvid boarded the Salvia, it was clear to all present that US officials were in charge of the operation and gave him every opportunity to request asylum.

DOS witnesses reminded investigators that to keep Medvid after he had signed a written statement requesting that he be allowed to return to the USSR would have required taking a Soviet citizen against his will, possibly creating problems for US citizens in similiar circumstances in the USSR. The likelihood of more severe retribution against Medvid's Soviet relatives was also cited as a deterrent to further US efforts.

After careful review of official government records, the Commission found no evidence to support the claims that the Soviet Embassy was advised of Medvid's attempted defection prior to notification by the Captain of the ship at the time US Border Patrol Agents boarded the vessel on Friday, October 25, 1985. Furthermore, the Commission found no support for allegations that Soviet officials contacted the State Department demanding the return of Medvid nor that the State Department acted in concert with the Soviet Embassy to return the seaman to the ship.

b) Geneva Summit Considerations

Questions were raised in various news articles as to the impact that the upcoming Geneva Summit talks between the United States and the USSR had upon the handling of the Medvid case.

While it is clear that virtually every US official involved was aware of the upcoming summit, investigators found no evidence to support allegations that Medvid was returned to the Soviets as an appeasment for upcoming talks. In fact, CSCE staff found substantial evidence corroborating claims by State Department officials that Medvid was given every chance to stay in the United States.

When interviewed, Secretary Shultz and other State Department officials maintained that just prior to any important bilateral meeting or event the USSR is more likely to be conciliatory than the US. [The classified section of this report contains information which supports DOS and White House contentions that the pressures generated by the impending Geneva summit may have resulted in a positive influence on the thoroughness of US efforts to resolve the matter.]

c) Secret grain agreement

In an undated memorandum from Legislative Aide David Sullivan to Senate Agriculture Committee Chairman Jesse Helms entitled "The Issue of Extra-territorality in the Subpoena to Seaman Medvid," Sullivan sets forth his theory of a possible "secret" grain agreement between the United States and the USSR. Sullivan, who had assisted the Committee's staff counsel in attempts to serve a Committee subpoena upon Medvid, outlined his concerns as follows:

> On Friday, November 8, 1985, the Soviet Diplomat Yevgeniy G. Vtyurin stated that the Soviet ship Marshal Konev was "Soviet territory" and as such was "totally immune" from US jurisdiction. At the time, I thought he was merely saying this for rhetorical effect to try to explain his attempts to deny that the subpoena for Seaman Medvid had in fact been legally served. I now believe, however, Diplomat Yevgeniy G. Vtyurin may have had some reason for believing this to be true.
>
> *It is possible that there was a secret agreement* between the State Department and the Soviet Embassy in Washington at some point to grant the Marshal Konev extraterritorial status. If this is true, it could also explain why the Konev's captain was reportedly reprimanded for allowing American officials to board, and why I was refused permission to board the ship the second time by the diplomat. [Emphasis added.]

See "Examination of the Soviet Vessel 'Marshal Konev' and Agricultural Commodities Relating to Grain Purchases," Hearing Before the Committee on Agriculture, Nutrition, and Forestry, US Senate, S. Hrg. 99-447, November 12, 1985, p. 44.

This theory was also discussed in several news articles, including a column by Wesley Pruden [Pruden on Politics], entitled, "Just Doing What The Mice Do Best," dated November 8, 1985.

[Complete text includes reference to *classified* documents and appears in the *classified* section of the report.]

Extensive CSCE investigation into the allegation of a "secret grain agreement" has failed to disclose any information to substantiate the existence of such an agreement, either in form or in substance, or in the adherence to procedures, verbal or written, at any level, which might implement the tenets of such a clandestine agreement between the two countries.

d) Executive Branch opposition to Senate subpoena

In interviews with CSCE staff, several witnesses cited Executive Branch opposition to the Senate Agriculture Committee subpoena as further proof of collusion between the US and the USSR, or at least appeasement of the Soviets by the State Department.

There is no question that the subpoena was generally opposed in the highest councils of the US government, and President Reagan was reliably reported to have agreed that it was undesirable to carry the Medvid affair any further. [Section I(A)(12) describes how some administration management officials were willing to assist the subpoena effort.]

However, investigators found no evidence to support allegations that this opposition was by, or due to, any agreement with the USSR, nor that it was aimed at assuring the repatriation of Medvid. Rather, the justifications for the Reagan administration opposition to the subpoena were consistently identified as the belief that every reasonable opportunity had been given Medvid already, and that the Executive Branch was properly authorized to make determinations of the sufficiency of that effort.

[The legality of this position is discussed in Part I(C) of this report.]

2. THE DRUGGING OF MEDVID

At approximately 3:00 pm on October 25, 1985, Deputy Chief Patrol Agent Worley and Patrol Agents Spurlock and Vannett boarded the M/V Marshal Konev. The agents met with the Captain of the ship, who informed them that Medvid had acted irrationally when he was brought back on board the previous night and had been found the following morning with a self-inflicted cut on his wrist. The Captain advised the agents that Medvid had been sedated by the ship's doctor and confined to the sick bay of the vessel. Medvid was later observed in the infirmary by US personnel and found to be unconscious, presumably under the influence of the ascribed medication(s).

From this point forward, questions were raised regarding the types of drugs administered to Medvid by the Soviet doctor and their effect upon his ability to make a voluntary decision about his future. As a result of these concerns, US officials enlisted the services of Dr. John Caruthers, Lieutenant Commander, Medical Corps, US Navy, who examined Medvid on board the Konev on Saturday, October 26, 1985.

In this medical examination and in a second examination conducted on board the Coast Guard Cutter Salvia on October 28, 1985, Dr. Caruthers found "no evidence that (the) patient is physically incapable of participating in his negotiations." See "The Attempted Defection of Miroslav Medvid," Hearings Before the Subcommittee on Immigration and Refugee Policy of the Committee on the Judiciary, US Senate, S. Hrg. 99-634, p.156. Dr. Caruthers, who observed Medvid throughout the negotiating sessions in the wardroom of the Coast Guard Cutter Salvia, later noted that Medvid "did not reveal any clinical evidence (e.g. ataxia, slurred speech, abnormal pupils, involuntary limb movement, decreased consciousness) to *existing* drug effects. Thus no laboratory studies were deemed necessary or useful to determine drug influence." *Supra,* at 154.

The third and final physical examination, "a more detailed exam," was conducted at the Naval Support Activity BOQ in Algiers, Louisiana. "This exam was to provide a general physical assessment of Mr. Medvid. The objective was fundamentally to provide a baseline physical exam on which the psychiatric exam could be superimposed." *Id.* Dr. Caruthers conferred with Dr. William M. Hunt, III, Major, United States Air Force, Staff Psychiatrist and

Chief of Inpatient Psychiatric Services at the USAF Medical Center (ATC), Keesler Air Force Base, Mississippi. While at the Naval BOQ, Dr. Hunt conducted two psychiatric interviews with Medvid totaling about 6-8 hours of direct contact with the subject. Dr. Hunt concluded that:

> MM (Miroslav Medvid) was assessed to clearly be, on 28 and 29 October 1985, as competent as basically any Soviet citizen to make a decision in regards to the issue of defection. In addition to the absence of psychosis (i.e., he was in touch with reality and his surroundings), there was no evidence suggestive of any ongoing significant mental disorder, including substance-induced intoxication, that would have impaired his competency.
>
> Furthermore, during this same time frame he demonstrated no evidence of internal conflict or ambivalence regarding his consistently stated desire to return to his ship and the USSR, and he clearly understood his basic choices.

Specifically regarding the drugs given to Medvid, Dr. Hunt noted:

> The Soviet doctor stated that the medications given were Amonizine and Seduzine, which he stated were commonly used in his country to treat Schizophrenia. This led me to the tentative conclusion that MM had been treated with neuroleptics (major tranquilizers) similar to common US pharmaceuticals . . .
>
> However, on 28 and 29 October 1985 MM did not appear to be under the sedative effects of any medications, with no indications of the other side effects which would commonly be seen if he were under the neuroleptic or psychotic-controlling effects of major tranquilizers.

[Additional discussion of this issue contains reference to *classified* documents and is included in the *classified* section of the report.]

Since the events transpired, controversy has continued over the adequacy of the medical and psychiatric examinations conducted by Drs. Caruthers and Hunt as part of the overall process by which US officials sought to determine Medvid's ability to make a rational decision regarding his return to the Soviet Union. A primary question in these examinations was whether or not the medications which were administered to Medvid affected his decision-making process.

To fully address these issues, the Commission sought the expertise of three eminent psychiatrists [listed below], initially recommended by the American Psychiatric Association, who were contracted to:

- Conduct a comprehensive and detailed review of the medical and psychiatric examinations of Miroslav Medvid performed in October 1985, and prepare a written evaluation thereof, to include consideration of a) the physical and emotional environment in which such examinations were performed and the impact these environments may have had upon the examination, and b) the possibility that Medvid was under the influence of drugs at the time of his examination and, if so, determine the impact this would have upon his decisions and actions;
- Identify the medical and psychiatric standards applicable in cases regarding suspected asylum applicants from the Soviet Union and Soviet-bloc countries and determine if the examinations performed in the Medvid case were adequate;
- Advise the Commission of appropriate methods for handling suspected asylum applicants from the Soviet Union and Soviet-bloc countries from a psychological viewpoint; and,
- Submit a written report of the aforementioned.

The psychiatrists conducting the study were:

Howard V. Zonana, M.D., Associate Professor of Psychiatry, Yale University; Director, Law & Psychiatry Unit and Training Program, Yale University; Area I Legislative Representative to Joint Commission on Government Relations of the American Psychiatric Association; President Elect, Connecticut Psychiatric Society (1982-1983); Board Examiner, American Board of Forensic Psychiatry (1982); Ethics Committee Member and Councilor - American Academy of Psychiatry and the Law; APA - Work Group on Education of Psychiatrists on Ethical Issues.

Loren H. Roth, M.D., M.P.H., Professor of Psychiatry, University of Pittsburgh; Chief, Adult Clinical Services, Western Psychiatric Institute and Clinic, University of Pittsburgh; Director, Law and Psychiatry Program, Western Psychiatric Institute and Clinic (1974-1985); Editorial Board, *International Journal of Law and Psychiatry*; Associate Editor, *American Journal of Psychiatry*; American Psychiatric Association: Council on Psychiatry and Law, Chairman, 1984-1989; Consultant, APA Task Force on Treatment of Psychiatric Disorders. Subspeciality Reviewer, DSMIIR, 1986; American College of Mental Health Administration. Committee on Translation of Clinical Research Findings into Clinical Programs, 1986.

Ezra E.H. Griffith, M.D., Associate Professor of Psychiatry, Yale University School of Medicine; Associate Director, Connecticut Mental Health Center, New Haven, Connecticut; Fellow, Pierson College, Yale University; Editor, *Yale Psychiatric Quarterly;* Member, International Committee, American Academy of Psychiatry and Law; Examiner, American Board of Psychiatry and Neurology; Examiner, American Board of Forensic Psychiatry.

The report prepared for the Commission by the aforementioned consultants and entitled "Review of the Psychiatric Examination in the Miroslav Medvid Incident and Suggested Guidelines for Psychiatric Evaluations of Aliens Whose Departure May Not Be Voluntary," appears in its entirety as an appendix to this report.

3. INTERVIEW CIRCUMSTANCES

Several allegations have arisen regarding the techniques utilized in the interviews with Medvid, as well as the overall environment in which these interviews occurred. These allegations include: that Soviet officials should have been excluded from the interview to allow Medvid the opportunity to speak freely; that the Ukrainian language, rather than the Russian language, should have been used by interpreters; and that the secrecy and seclusion imposed by the Department of State, preventing access to Medvid by American relatives, attorneys, reporters and other interested parties, precluded a more reliable determination of Medvid's true wishes.

[Investigative findings regarding certain elements of the interview process are discussed in detail in the separate *classified* portion of the report.]

a) The presence of Soviet officials at the interviews

INS procedures direct that Embassy or Consular officials or officials from the vessel will not be allowed to talk with the alien until all processing of the asylum application is completed, and then only with the authorization of the Department of State. [See Part II(A)(2)(b) for additional comments on this issue.] State Department and INS officials interviewed noted that these procedures were preempted by the fact that Medvid was in Soviet custody.

In their negotations, US officials agreed to allow Soviet presence at the interviews, primarily out of concern for equal access to US citizens abroad. In reviewing other cases where Soviet and Soviet-bloc nationals have been detained by US officials in an attempt to verify their willingness to leave the country, investigators found that the presence of Consular/Embassy officials at these interviews was a well established practice.

b) Use of the Russian language

The primary reason for using the Russian language during the Salvia and BOQ interviews was strictly out of diplomatic courtesy to all Soviets present.

Whether Russian or Ukrainian was Medvid's "native language" was not clearly established by investigative findings, but his equal, or nearly equal, proficiency in both languages is a reasonable conclusion, based upon the opinions of the few persons competent to make a professional judgment in this regard.

Sell and Lavroff asserted that Medvid lacked neither the proficiency nor the inclination to converse in Russian. Padoch, by her own admission, does not speak Russian and conversed with Medvid only in Ukrainian.

c) Secrecy and seclusion

Reporters, relatives and other interested parties were generally barred from contact with Miroslav Medvid during the course of his removal to US territory. Public media access to the details of the Salvia interview was restricted and news releases regarding the ongoing events were carefully and succinctly worded.

The imposition of stringent "secrecy" rules upon the Medvid negotiations and interviews was defended by both the Department of State and the INS as standard practice in this type of case. Witnesses presented arguments that the asylum candidate or potential asylee/defector is better served by the absence of media attention, as is the deliberative process and discreet arrangements they often necessitate. State Department officials noted that the degree of retribution believed to be inflicted upon relatives of Soviet defectors is often commensurate with the degree of embarrassment and trouble caused to the Soviet government.

4. THE IMPOSTER THEORY

The imposter theory seems to have transcended many other factual issues in this case, and has taken on a life of its own. Obviously, if Miroslav Medvid was replaced with a dupe, all the testimony of witnesses, from the time of the Salvia interview until Medvid was allowed to return to his ship, is tainted. Neither the negotiators, nor the interpreter, nor the security force personnel, nor INS and Customs on-scene personnel would have had the opportunity to observe or report on the real Medvid.

The theory seems to have been pieced together from numerous events and circumstances which, when taken as a whole, make a solid argument for proponents of the "switch" idea. A descriptive narrative of the evolution of several theories is handled, at length, below.

However, it should be noted here that the issue of a Medvid imposter has been resolved to the complete and thorough satisfaction of the Commission investigators. No "switch" is deemed to have occurred. No imposter is believed to have been substituted for the original seaman. *It is understood that Miroslav Medvid himself participated in the Salvia and Naval Support Activity interviews.*

a) Origin of the "Switch" Theory

The genesis of the "switch theory" is most likely rooted in one or all of the following sequences of events:

i) The Times-Picayune News Photograph

On October 30, 1985, the Times-Picayune newspaper published a picture taken by its photographer, Matt Rose, which showed four males disembarking the M/V Marshal Konev. One of the four, a man with bushy hair, was misidentified in the caption as Miroslav Medvid. [EXHIBIT #53]

US officials who had seen the identification photograph taken by Patrol Agent Spurlock, and had themselves seen Medvid, immediately recognized that a mistake had been made. The male in the photograph identified as Medvid was actually the Soviet ship's doctor. According to numerous eyewitnesses, Medvid was second from the left in the picture, not second from the right as erroneously reported.

Joseph Wyman also recognized the mistake. He immediately called the local INS office in an attempt to locate INS Investigator Michael McMahon, who had interviewed him earlier. Wyman was advised that McMahon had already returned to Dallas. However, he was assured that INS officials were aware of the mistake in the identification of Medvid. An agent told Wyman that the man identified in the newspaper was actually the ship's doctor. Wyman told the INS representative on the telephone that he was unsure if the Medvid he had encountered was even in the photograph. The agent assured Wyman that they had the right man. However, Wyman reiterated that he did not think that Medvid was in the photograph.

According to Wyman, he was subsequently contacted by press representatives and asked if the man so identified in the photograph was Medvid. Wyman repeated his earlier comments to the INS and was quoted in various news articles as saying that the man identified as Medvid was not, in fact, Medvid.

Wyman told one of the reporters, Rita McWilliams of the Washington Times, that Medvid might have been the individual in the picture with his head turned, but he could not positively identify the man as Medvid.

ii) The Geltz/Cleary Photographs

On Tuesday, October 29, 1985, Navy Lieutenant James Geltz, the Public Affairs Officer at the Naval base in Algiers, LA, and his assistant, Bernard Cleary, took surreptitious photographs of the Medvid party exiting the BOQ enroute to the Soviet ship. After the Times-Picayune published its photograph, resulting in controversy over the indentification of Medvid, Geltz called Joseph Wyman.

Identifying himself only as "Mr. Robinson," Geltz explained to Wyman that he had heard about the possibility that a "switch" may have occurred and that the seaman removed for questioning by US officials may not have been the same seaman Wyman encountered on October 24th. Geltz stated that he had photographs of the man interviewed by US officials, and asked Wyman and his nephew to meet him to look at the photographs.

Wyman agreed to meet with him that night at Naquin's Restaurant in Belle Chasse. Wayne Wyman was also present. The three men talked for a while, with Geltz continuing to conceal his identity. Finally, Geltz showed Joe and Wayne a black and white 8x10 print and asked the Wymans if they could identify the man in the center of the photograph. [EXHIBIT #54]

Wyman stated that he refused to comment about the photograph until Geltz revealed his true identity. Geltz confessed his true name and position. He told Wyman that he was "simply dying of curiosity" to find out if the photograph was really Medvid.

According to Wyman, everyone seemed hesitant to state their opinion, so Geltz counted to three, at which time Joe and Wayne simultaneously blurted out that they *did not* think the man in the picture was the real Medvid.

The discussion that ensued enhanced their consensus that a "switch" had taken place. The man interviewed at the NSA BOQ was alleged to have been radically different, physically and behaviorally, from the man Wyman had seen at his store in Belle Chasse. Wyman had heard that the second man was very belligerent, made sexual gestures, liked to watch television and occasionally made simple comments in English. Wyman stated that the Medvid he met spoke no English and yet four days after they met him, Medvid was reportedly answering questions with an English "yes" and "no." This was reported in both the doctor's examination report and the psychiatrist's report. Wyman commented that the Soviets apparently did not realize that Medvid had encountered the Wymans in Belle Chasse and did not know that he could identify the "real" Medvid.

Wyman noted for CSCE investigators the following alleged discrepancies in the photographs which seemed to lend weight to the "switch" theory:

- the photograph showed a man who was about 35 years old, much older than the man Wyman had originally seen, who he believed was about 23-25 years old;
- the size of the man was different. According to Wyman, Medvid had broad, massive shoulders, with an athletic build; he described the man in Geltz's photograph as a "wimp;"

– he remembered "his" Medvid having fair skin with a rough complexion. He believed the man in the Geltz photograph was olive skinned, more of a "mediterranean" type;
– "Wyman's" Medvid had shorter and lighter colored hair than the man in Geltz's photograph;
– he did not remember the photograph showing any moustache, but clearly recalled Medvid having one;
– the man in the photograph had longer sideburns, more of a receding hairline and straighter eyebrows; and
– he remembered Medvid's face was round, while the man in the photograph appeared to have a "square-shaped" face.

At the end of the meeting with Geltz, Wyman and the Navy Lieutenant traded telephone numbers. The next day, Geltz called Wyman who suggested that Geltz talk to authorities about the photographs. Wyman still had a telephone number for Jim Lucier, of Senator Helms' staff, which he had been given during the effort to serve the Senate subpoena on Medvid. Wyman telephoned Lucier and told him about the Geltz photographs and suggested to Lucier that a switch had been made. Wyman believed this was the first time Lucier had considered the possibility of a switch. Wyman stated that Lucier was reluctant to believe that a switch could have occurred. Wyman also advised that on Wednesday, David Sullivan, also from Senator Helms' staff, called him back and told him to tell Geltz not to let the photographs out of his possession. He believed that the "national interest" was at stake.

Meanwhile, it was the determination of the US Navy that the Geltz photographs were taken against direct orders, using a government camera. NSA Base Commander Fare ordered Geltz to deliver the unauthorized photographs into US Navy control. Wyman knew that Geltz was inadvertantly being put into a bad position between the Navy and Senate interests. Geltz was susceptible to receive disciplinary action from the Navy for refusing to turn over his photographs to them, as ordered. However, Sullivan reportedly told Wyman that the Senate would protect Geltz if the Navy chose to bring charges against him.

Geltz eventually consented to release to photographs and negatives to the Navy. This evidence was properly documented and delivered to US Navy Headquarters in Washington, DC. Soon thereafter, the Navy released the evidence to Senator Helms' staff for their use.

iii) The Matt Rose Photographs

In early November of 1985, Wyman met Orest Baranyk, an architect from Chicago who became personally interested in the Medvid case. Wyman and Baranyk discussed the imposter theory. Later, Baranyk made arrangements for Wyman to pick up two more Medvid-related photographs from Matt Rose at the Times-Picayune. One of the photographs showed a frontal view of the "second" Medvid. [EXHIBIT #55]

Two or three days later, Wyman told Jack Landau, an investigative reporter, about having the Matt Rose photographs. Wyman stated that Landau had previously spoken with Spurlock and had developed a good rapport with him. Landau called Wyman back and said that he had spoken again with Spurlock and that Spurlock wanted to see the Rose prints. Wyman agreed and Spurlock came over that night about 8:30 pm. According to Wyman, Spurlock introduced himself, sat and drank three cups of coffee and smoked a whole pack of cigarettes in about 45 minutes.

They chatted. Spurlock allegedly mentioned that he had served as a US Embassy guard and that Medvid was his first defector. Wyman got the impression that Spurlock was hiding something. Spurlock was allegedly evasive, extremely nervous, and did not want to answer any questions. He supposedly dodged issues and would not look Wyman in the eye. Wyman alleged that Spurlock told Wyman he had met with him out of curiousity to see what Wyman had in his possession. He wanted to know if it was "b.s." Wyman asked Spurlock to describe Medvid. Spurlock allegedly said that Medvid had an athletic build with broad shoulders, and that he was 70" tall and weighed 174 lbs. He had a fair complexion with a moustache.

Wyman asked Spurlock why he had sent Medvid back to the ship and Spurlock allegedly said "I did my job" and refused to comment further. Wyman asked Spurlock if Medvid had asked for political asylum. Spurlock allegedly looked down at the floor and said "he never asked for political asylum."

Finally, Wyman showed the Matt Rose photographs to Spurlock. First, he showed him the profile shot taken by Rose. Wyman stated that Spurlock indicated he had left his glasses at home, even though the main reason for him being at the Wyman's was to view the photograph. Wyman loaned him his own glasses. Spurlock recognized the photograph as the one published in the newspaper. Then Wyman showed Spurlock the full-face print. Spurlock allegedly reacted immediately, his eyes getting big. He kept looking at the photograph and finally said, "could be, might be, I don't know." Wyman asked him if it was "the same guy." Spurlock said it looked like him, but said it also did not look like him. Wyman said Spurlock would not answer yes or no. He felt that Spurlock just did not want to answer Wyman's question.

Wyman said that they continued talking and Spurlock was upset that the incident was ruining his career. Wyman stated that Spurlock refused to talk further after seeing the photographs, except for casual conversation. In that portion of the conversation, Wyman allegedly asked him why, if the man (Medvid) did not want asylum, Spurlock had noted "political and moral reasons" on the INS form. Spurlock stated that he "had to put something down."

As Spurlock left, he allegedly stated again, "I did my job. If they try to burn me, I'll burn the State Department and INS." Wyman interpreted the comment to mean that Spurlock had been told to return Medvid to the ship and that Spurlock was was not going to be made into a scapegoat.

iv) Spurlock's Alleged Confession

Wyman claims to have met Spurlock a second time, and that during that meeting, Spurlock told him that within 20 minutes after completing his call to Irene Padoch, he received a telephone call from the State Department in Washington asking if the Border

Patrol had Medvid. Spurlock allegedly answered yes, that Medvid had jumped ship and wanted asylum.

Wyman theorized that the State Department may have found out about Medvid through the Harbor Police, who had been instructed to notify the local State Department office, if any Soviet seaman attempted to defect. [New Orleans Harbor Police officials told investigators that no such procedures exist.]

A second telephone call was supposedly received by Spurlock about 10 minutes later, although Spurlock never identified the caller to Wyman. Spurlock was allegedly told to do his job and send the seaman back to the ship. Wyman said that Spurlock was concerned about the call and, as a result, made a notation on the I-213 form to the effect that Medvid jumped for "political and moral" reasons, to protect himself. Also, Spurlock allegedly insisted that Bashaw sign the report because Spurlock did not want his name on it. [Investigators found no evidence to support Wyman's claims of a second meeting with Spurlock or of telephone calls from the Department of State directing the repatriation of Medvid.]

Spurlock was then said to have called the Universal Shipping agent and told them to come and get Medvid. Flad and his roommate (Maloz) were told to take Medvid back to the ship and were given plastic handcuffs. Spurlock allegedly told them that if they had any problems to "bring him back here."

The agents left with Medvid and took him back to Belle Chasse. According to Wyman, Medvid knew he was going back to the ship. Wyman wondered why he did not fight or resist and theorized that Medvid may have thought he was returning to the ship to get his personal belongings. When the Soviet mate came down and began talking with Medvid, he realized this was not the case.

Wyman stated that when Spurlock arrived on the ship the following afternoon, several other Americans ("high muckety-mucks") were already on board, including a man from the State Department. Spurlock was told to go into the sick bay, sit on the stool and keep watch over the man in the bunk. Supposedly, he was told by a supervisor not to go near the man and not to interfere with the doctor. Spurlock allegedly told Wyman that he thought Medvid was in physical trouble and felt badly for him.

Wyman claims that Spurlock told him that he was the only American in the sick bay with Medvid and that he never saw Medvid's face. He allegedly knew that it was Medvid even though Medvid's face was against the wall. The Soviet doctor was also in the room taking Medvid's blood pressure every 15 minutes or so. After about 1-1/2 hours, the Captain came into the room and began talking with the doctor. The Captain then told Spurlock that he could not stay in the room, and insisted that he leave. Spurlock insisted that he needed "eye contact" with Medvid, but finally stepped out into the corridor. The Captain escorted Spurlock into the next room to join the other Border Patrol agents.

After about 15 minutes, the Soviet doctor came out and talked with the Captain, who then allowed Spurlock back into the room. When he returned to the room, Spurlock allegedly noticed there was a bandage on the man's left arm. The man was covered with a sheet. He could not see his face. Spurlock also is alleged to have told Wyman that the room was accessible through another doorway. Spurlock told Wyman that Medvid had previously been on top of the covers, still in the same shirt and shorts he wore during their first encounter.

Spurlock reportedly stayed in the room about 30 minutes longer, until his relief came. He told his relief that the man in the bed was Medvid, even though he had never seen his face. Spurlock was never allowed back on the ship again and never saw Medvid again.

Wyman said that Spurlock described the room as having double bunk beds. Medvid was supposedly in the bottom bunk on the right side against the bulkhead. The room was about 12' x 20' wide. There was a door to the left as you entered the room with a chair in the opposite corner. There was also a medicine chest or cabinet in the room. According to Wyman, Spurlock stated that he never got near Medvid.

Supposedly, Spurlock recognized Medvid from his clothing, not his facial features. Medvid was lying on his back with his head turned to the wall. He had no pillow and was laying on a stiff board. The doctor had left the pressure gauge on Medvid's arm, prompting Spurlock to wonder if something was wrong. The doctor took Medvid's pressure at least six times while Spurlock was in the room.

When asked why he thought Spurlock had confided so much information to him, Wyman told CSCE investigators that he thought Spurlock's conscience was bothering him, that he needed to confide in someone and confided in Wyman because Wyman knew what was really happening.

Wyman is convinced that his telephone was tapped by government agents. While arranging a third meeting with Spurlock in January 1986, Spurlock allegedly said on the telephone that he had "proof positive" of a switch. In arranging previous meetings, Spurlock had been very secretive. Wyman also stated that there were clicking noises on the telephone with a lot of background interference. Wyman stated that when he yelled into the phone to "turn the volume down," the static on the line cleared.

v) The Alleged Spurlock photograph

When Wyman allegedly met Spurlock the third time, Spurlock acted like a different person. He was very cool towards Wyman and "acted as if someone knew" that they were talking. At this meeting, Spurlock allegedly showed a photograph to Wyman which he had taken on the ship. The photograph showed Medvid on the bunk. One of his eyes was swollen. A "small guy" was standing next to Medvid, a bandage clearly visible on his arm. According to Wyman, the photograph was "too good to be true." It would have been convincing evidence that a switch had been made, since both men could be clearly seen. It appeared to be a candid shot, but Wyman was convinced that it was a fake photograph. Wyman claims there was "no depth perception" to the photograph. He also believed that Spurlock was trying to "set him up."

Wyman told Orest Baranyk about the Spurlock photograph. Baranyk, in turn, passed this information along to John Barron, Senior Editor of the Reader's Digest, from Washington, DC, whom

Wyman claimed flew to New Orleans in an attempt to "make a deal" with Spurlock for the photograph.

In statements to CSCE investigators, Barron said he flew to New Orleans to begin his own investigation of the facts of the Medvid incident, for a potential story for his publication. After five or six trips, Barron felt he developed a thorough understanding, not only of the facts, but also of the realities of the controversies surrounding the Medvid issues.

Barron had dinner with Travis Douglas, the attorney acting on behalf of Ernest Spurlock and Joseph Bashaw. He articulated the conspiracy theory to Douglas, who responded that the tenets of this theory were diametrically opposed to everything his clients had told him. Douglas did say that he wanted to make sure of certain points with Spurlock and Bashaw before commenting further. He later reaffirmed to Barron his convictions that his clients were telling the whole truth.

Barron said that Wyman alleged that Spurlock had met with him "five or six times" in secret. During the purported "secret" meetings with Joseph Wyman, Spurlock was alleged (by Wyman) to have admitted to seeing two different Medvids; one severely beaten up, lying on a cot in the sick bay of the Marshal Konev, and another, different in appearance, with no cuts or abrasions on his head or face. Spurlock had also allegedly admitted to Wyman that his own feelings were that there *had* been a switch for the original Medvid. Wyman stated to Barron that he had to get two or three drinks down Spurlock before he would start talking. Barron stated that he tried to pin Wyman down on this point and Wyman was absolutely sure about Spurlock drinking in his presence.

When Barron confronted Travis Douglas with these allegations, Douglas advised him a) that Spurlock had only met with Wyman *once* at Wyman's home to look at the Geltz photographs, b) that Spurlock never stipulated to the facts alleged by Wyman, and c) that Spurlock does not drink alcoholic beverages and, in fact, cannot drink any amount of alcohol whatsoever without serious medical consequences. Douglas supplied CSCE investigators with an affidavit stipulating these facts. [EXHIBIT #56]

Seeing that the basic conflict in the Medvid story seemed to come from Wyman on one side and Spurlock on the other, Barron asked that both men take lie detector tests. Both agreed. Spurlock took the test and passed. [EXHIBIT #57] The results were introduced into a subsequent administrative hearing on the personnel action taken against Spurlock. Wyman originally agreed to take the test, but had a series of conflicts in his agenda and never took it.

Barron obtained copies of the Geltz/Cleary photographs from Senator Helms' staff, and others (the original Border Patrol mug shot and the Rose photograph of the official party departing the Konev for interview on the Salvia) which could be used for facial comparisons. Reader's Digest commissioned "one of the foremost photographic laboratories in the country," (which Barron declined to identify) to determine whether the INS photographs and the others were of the same individual. The findings of the laboratory stipulated that, due to the nature of the photographs, the results precluded an "official report" that the likenesses of Medvid were identical. *However*, the lab analyses did state that *there were more* *similarities than dissimilarities*, indicating to Barron that they were probably the same man.

Barron had no doubt that Medvid was a genuine defector "on that first night." However, he could uncover no evidence that Wyman's story was accurate, beyond his description of the first night's encounter. Barron said that he began to understand Spurlock's and Bashaw's contentions that Wyman and Geltz were the principle voices that kept the controversy alive. [EXHIBIT #58]

b) Efforts to resolve the identity issue

i) Forensic analyses

Since eyewitness accounts, including statements by Agents Spurlock and Vannett, have been discounted by many as naturally biased, CSCE's efforts to resolve this issue concentrated on the full development of the available physical evidence.

At the earlier request of the Senate Agriculture Committee, the FBI Laboratory compared a black and white copy of the Border Patrol identification photograph with those photographs taken by Lieutenant Jim Geltz and Bernard Cleary. The results were inconclusive, due to the poor quality of the Geltz/Cleary photographs.

Since the photographs published in the Times-Picayune were not included in this examination, the Commission requested and obtained copies of the prints from the newspaper and gathered all of the known available photographs for additional examination. US Government technical experts examined these photographs, in addition to previously submitted materials, and subsequently informed CSCE investigators of their conclusion that a comparison of photographic subjects indicates a high probability that the individuals are the same person.

It is noted that the CSCE investigative staff received by mail an unsolicited morphological facial skeleton comparison from a concerned civilian physician, comparing a Border Patrol photograph (mug shot) and a blow-up of a Medvid likeness extracted from the Times-Picayune news photo. This comparison attests that "two different individuals existed." [EXHIBIT #59]

The FBI Laboratory conducted a CSCE-requested photographic analysis of two black and white prints taken by Lieutenant Geltz at the NSA BOQ in an attempt to determine Medvid's height and other measurements, for comparison purposes. The laboratory was unable to render an opinion based upon the available evidence supplied.

The FBI Laboratory also examined all of the known handwriting samples, including a letter subsequently received by former Cong. Fred Eckert. This analysis was inconclusive.

Investigators requested the assistance of US Government technical experts in determining whether the Harbor Police tape recording of the conversation between Medvid and an interpreter, and the interview tape recorded by Border Patrol Chief Brandemuehl aboard the Salvia revealed the true identity of the "second" Medvid. Due to the poor quality of the recordings, a voice print analysis was deemed inconclusive.

Finally, investigators gathered all available items known to have been handled by "both" Medvids and submitted these to the FBI

Laboratory for fingerprint analysis. The Laboratory Report positively identified the man who signed the statements of intent at the Navy BOQ on October 29, 1985, as the same man fingerprinted by Patrol Agent Spurlock on the evening of October 24, 1985. Matching fingerprints were also found on the letter to former Congressman Fred Eckert. [EXHIBIT #60]

ii) CSCE request to interview Medvid

After a careful review of the Medvid issues and all available information, the CSCE investigative staff determined that many of the lingering issues in the case could be readily resolved if Commission investigators were allowed to meet with Mr. Medvid.

On December 8, 1986, a CSCE written request was delivered to Yuri V. Dubinin, Soviet Ambassador to the United States, respectfully requesting his assistance in arranging a personal visit with Miroslav Medvid during the week of January 26-30, 1987. [EXHIBIT #61]

In a personal reply to the CSCE request, delivered to Commission staff at the Soviet Embassy in Washington, DC on February 9, 1987, Dr. Evgeny G. Kutovoy, Soviet Minister-Counselor, presented the following carefully worded verbatim statement:

> Mr. Medvid recently got married and changed his place of residence. He is well and satisfied with his job. Due to these circumstances, he would like to avoid any undue attention. A meeting with him would be inappropriate at this time, due to humanitarian reasons.

c) Investigative findings

Evidence disclaiming the "switch" theory is enumerated below:

- A preponderance of corroborative testimony by primary witnesses stipulating the identity of only one Medvid, based upon a comparison of his INS photograph (mug shot) and their personal observations of the individual. This evidence is documented throughout Part I of this report;
- The chain of identity established by Border Patrol Agent Ernest Spurlock and David Vannett. Spurlock encountered the seaman, at length, during the early processing at the Border Patrol Station and later positively identified Medvid in the sick bay of the Soviet vessel. Vannett identified Medvid to other US personnel on the basis of Spurlock's identification and the chain of identification was maintained until Medvid's final departure;
- The nonexistance of traumatic injury to Medvid's head or face. The alleged severe injuries, reportedly sustained during the dramatic physical struggle which took place on the levee prior to Medvid's forced return to his ship, formed one of the strong bases for the "switch" theory. The man who was produced for interview aboard the Salvia was free of any major traumatic injury, save his lacerated wrist. This was verified during the medical examination of the subject. Eyewitness testimony clearly established (reference Part I) that Medvid was on the muddy portion of the levee during the fracas and that he only banged the back of his head on the ground, not the rocks. Afterwards, no visible injuries were observed by witnesses;
- *Positive fingerprint identification of Miroslav Medvid on two documents, developed by the Federal Bureau of Investigation Latent*

Fingerprint Section, Case No. C-61174 [EXHIBIT #62]. These fingerprints were found on the statements of intention signed by Medvid at the NSA BOQ on November 29, 1985 (on both the English and the Russian translations) and also on a handwritten Medvid letter mailed to Congressman Fred Eckert on April 14, 1986, postmarked at Lviv, Ukraine. Four fingerprints were found to be identical with the fingerprints taken by Border Patrol Agent Spurlock during Medvid's initial processing at the Border Patrol Station.

C. THE INFRACTIONS

Section 23(a)(1) of S. Res. 353 directs the Commission to determine whether violations of federal, state or local law occurred in connection with the attempted defection of Miroslav Medvid and, based upon this review, whether changes are needed in current federal law.

Pursuant to this directive, the Commission staff reviewed the relevant federal, state and local laws which pertain to this case. After careful review of the facts, it was determined that issues raised by this case are limited to areas of exclusive federal jurisdiction. Therefore, no discussion of state or local (Louisiana) laws is included.

Furthermore, since the primary issue of the Medvid case was whether or not the crewman left voluntarily and did not reach the issue of asylum adjudications, the staff review was similarly narrowed to:

- jurisdiction over foreign vessels and their crew;
- requirements of foreign vessels entering US waters;
- crewmen control; and
- enforcement of Senate subpoenas.

These topics are discussed in the following sections, with specific reference to current laws, regulations and policy, as compared with the actions taken in the Medvid case.

The discussions which follow clearly pinpoint instances where the participants deviated from the prescribed procedures established for the implementation of the Immigration and Nationality Act of 1952, and the handling of asylum applicants. For the most part these infractions, while serious in consequence, appear to be the result of carelessness, rather than willfulness. However, evaluation of the facts and circumstances surrounding this incident reveals more problematic issues of deviation, at higher levels of authority, from Congressionally and constitutionally mandated procedures; specifically,

- the deference of the Attorney General to the Department of State, in the handling of the Medvid incident; and
- the failure of INS to prevent the departure of Medvid in the face of a pending Congressional hearing at which his testimony was sought.

These issues are discussed in light of prior holdings of the Supreme Court as to their consitutionality in their own regard, as well as to their impact on due process in the context of immigration matters.

1. JURISDICTION OVER FOREIGN VESSELS AND THEIR CREW

As a general rule, merchant ships of one country which voluntarily enter the territorial limits of another are subject to the jurisdiction of the coastal state. *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 124 (1923). Congress has the power to legislate all matters affecting foreign seamen and foreign vessels when within US ports, by making their entry subject to such conditions as Congress may impose. *Patterson v. Bark Eudora*, 190 U.S. 169, 178 (1903). The provisions of an act of Congress passed in the proper exercise of its constitutional authority must be upheld by the courts, even if it contravenes express stipulations in an earlier treaty. Norton, *Law of the Seamen*, Vol. 1, Section 4:11 (4th ed., 1985).

While crimes committed on board a foreign vessel in US waters are not exempt from local laws if the crime affects the peace and security of the port, *Wildenhus's Case*, 120 U.S. 1, 8 (1887), there is an implied consent of the US government to abstain from interfering with the internal discipline of foreign merchant vessels while they are in US harbors, and to leave this jurisdiction to the nations to which those vessels belong. *Patterson v. Bark Eudor, supra*.

In the case at hand, the Soviet merchant vessel Marshal Konev voluntarily entered US waters for business purposes. By this action, the ship and its crew became subject to the laws and regulations governing foreign ships and alien crewmen in US ports.

As the events in the Medvid case began to unfold, numerous allegations began to circulate. Charges were made that Medvid had been shanghaied, that he had been beaten, that he had been drugged, even that he had been killed. As a result, local authorities were repeatedly asked to intercede in the case.

Clearly, local authorities have jurisdiction in matters, such as murder, which affect the peace and security of the port. For this reason, local authorities were kept informed of the events in the Medvid case as they developed. However, since immigration is clearly an area of the law which Congress has sought to regulate, and since the case centered on immigration issues and potential violations of those laws, federal officers took a primary role in the case.

Despite the use of the word by several eyewitnesses, there is no evidence to support allegations that Medvid was actually "beaten." He clearly resisted efforts to return him to the ship. But there is no evidence that Medvid was struck by anyone – only that he was overpowered by his fellow Ukrainian shipmates and carried, unwillingly, aboard the Soviet ship.

While Medvid was later found to have a cut on his left arm, the injury appeared to the examining doctor to have been self-inflicted. There is no evidence to contradict this explanation.

Without some indication of criminal activity on board the vessel or the involvement of a local citizen, the jurisdictional control properly remained in a federal forum.

2. REQUIREMENTS OF FOREIGN VESSELS ENTERING US WATERS

Foreign vessels must comply with the laws and regulations of the coastal state relating to navigation, safety, health, etc. *Restatement* *of Foreign Relations Law of the United States* (Revised), Section 502, comment e (Tentative Draft No. 3, 1982).

a) US Coast Guard Regulations

The Coast Guard controls the movement of all vessels in United States ports under the authority of the Ports and Waterways Safety Act of 1972 and the Magnuson Act of 1950. This activity is carried out by the 48 Captains of the Port throughout the country.

The Captains of the Port conduct boardings, examinations and enforce laws and treaties on these vessels in the same manner as is carried out on all other US and Foreign Flag vessels in our port.

The Coast Guard also administers the United States Port Security Program, as directed by the National Security Council Decision Memorandum 340. This program requires that prior to any Warsaw Pact vessel entering a US port, a request must be submitted to the Coast Guard along with the vessel's itinerary. The request and itinerary are reviewed by the appropriate Federal agencies and with their concurrence the vessel is permitted to make the various port calls.

In accordance with 50 USC Section 191, the President of the United States has broad authority:

> to govern the anchorage and movement of any foreign-flag vessels in the territorial waters of the United States, to inspect such vessels at any time, to place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States . . . may take for such purposes full possession and control of such vessels and remove therefrom the officers and crew thereof, and all other persons not especially authorized by him to go or remain on board thereof.

The Special Interest Vessel [SIV] Program was established under the authority of the Magnuson Act, as amended, and Executive Order 10173 of October 20, 1950. Violations of orders issued by the Coast Guard Captain of the Port (COTP) to a Special Interest Vessel carry the penalties proscribed by 50 USC Section 192.

The M/V Marshal Konev entered the waters of this country under the provisions of the SIV Program.

Fourteen days prior to entering US waters, all Eastern Bloc vessels are required to submit, via a US agent, a request for all U. S. port calls desired. All port calls are subject to the approval of the Port Security Committee. The Coast Guard handles the administration, including message traffic, of the [SIV] program.

On October 4, 1985, the M/V Marshal Konev requested, through its agent, Universal Shipping Agencies, Inc., permission for various port calls, including New Orleans, for the purpose of loading grain destined for Russia. The itinerary for the M/V Marshall Konev, Flag: USSR, Call Sign: UMUF, submitted follows:

New Orleans	10/20-25/85
Burnside	10/25-26/85
Baton Rouge	10/26-27/85
Mobile	10/28-29/85
Pascagoula	10/29-30/85
Beaumont	10/30-31/85
Galveston	10/31-11/01/85
Houston	11/01-11/02
Corpus Christi	11/02-14/85

Cargo: Grain in bulk
Destination: Odessa, USSR
Master's name: Tkachenko Rionges

This original request and six subsequent changes were submitted to the Coast Guard, as required by the Port Security Program. The final approval issued by the Coast Guard limited the M/V Marshal Konev to visit only three ports [New Orleans, Burnside, and Baton Rouge] from 10/24/85 to 11/14/85.

The M/V Marshal Konev was permitted to depart US territory on November 9, 1985. Port calls at Burnside and Baton Rouge were withdrawn at that time.

This particular aspect of the port call of the M/V Marshal Konev was entirely routine in nature and in compliance with the SIV Program.

Although the M/V Marshal Konev was granted permission by the Port Security Committee to visit the port of New Orleans, all vessels entering a U.S. port from sea are required to provide the Captain of the Port with 24 hours advance notice of arrival in accordance with 33 CFR Section 160. In the case of a foreign vessel, the shipping agent usually provides the Coast Guard with this notice. In this case, no notice was given.

Failure to provide 24 hour advance notice is a violation punishable by a civil penalty of up to $25,000 or a criminal penalty of $50,000 fine and/or imprisonment for not more than 5 years. While this is not a common violation, it does happen on occasion. Investigation usually determines the cause was an oversight by the vessel's agent. In such cases a civil penalty is usually imposed against the vessel.

In accordance with 46 USC Section 91, a vessel may not depart a U.S. port bound for a foreign port without a departure clearance. The M/V Marshal Konev received the appropriate departure clearance from the Coast Guard after filing Change 7 of their 14-Day Itinerary Request through their shipping agent. They sailed from New Orleans, LA, on November 9, 1985, destined for Canada. Their last two port calls in the United States were automatically cancelled.

b) US Customs Service Inspection of Foreign Vessels

All foreign vessels entering US territorial waters must also fulfill certain procedural requirements of the Department of the Treasury, United States Customs Service.

In New Orleans, LA, when a ship approaches the mouth of the Mississippi River, two hours advance notification is required to be given to US Customs. The Assignment Desk at Customs then schedules an agent (by name) to the vessel and a preliminary clearance [foreign entry clearance] is granted. This clearance, though preliminary, allows the ship to conduct business prior to the issuance of a formal entry clearance.

A Notice of Readiness is subsequently tendered by the ship prior to docking at a grain elevator. A boarding party consisting of inspectors from the US Customs Service, the Immigration and Naturalization Service, and the Department of Agriculture (USDA) then boards the vessel for formal inspection.

The ship's agent is normally given 24 hours to make formal entry application for the vessel and to pay tonnage tax. In the case of the M/V Marshal Konev, the tax was $2,401.38.

No violations of any US Customs regulations by the M/V Marshal Konev or the ship's agent were reported during the passage of the ship in or out of the New Orleans area from October 24 - November 9, 1985.

c) The INS Inspection of Foreign Crewmen

Section 103 of the Immigration and Nationality Act of 1952 charges the Attorney General with the administration and enforcement of the Act and all other laws relating to the immigration and naturalization of aliens, except as they relate to the powers, functions and duties conferred upon the President, the Secretary of State, the offices of the Department of State, or diplomatic or consular officers.

From the authority delegated by the Attorney General, the Commissioner of Immigration and Naturalization is authorized to exercise and perform the powers, privileges, and duties conferred by the Act upon the Attorney General, except the authority delegated to the Board of Immigration Appeals.

Section 235 of the Act provides for "[T]he inspection . . . of aliens (including alien crewmen) seeking admission or readmission to or the privilege of passing through the United States" to be conducted by one or more immigration officers, except as otherwise provided in regard to special inquiry officers. The purpose of the inspection is to determine who is on board the craft and whether that person's entry into the United States is legal.

Under the authority granted by sections 235 and 287 of the Act, an immigration inspector may question, under oath, any person coming into the US to determine, among other matters, whether he or she is a citizen of the United States.

The Act defines an alien as any person who is not a citizen or national of the United States and divides alien applicants for admission into two general classes called immigrants and nonimmigrants. Immigrants are those aliens coming to the United States to reside permanently. Nonimmigrants are those aliens seeking to legally enter the United States for a temporary period. All aliens, whether immigrants or nonimmigrants, must be admitted under the general immigration laws.

Currently, there are twelve classes of nonimmigrants. A crewman (Class D) is defined as a person serving in any capacity on board a vessel or aircraft. A D-1 crewman is one who will be leaving on the same vessel or airline; a D-2 crewman is one who will be departing by some means other than the vessel he or she arrived on. [For the purposes of this report, discussion will be limited to crewmen on board vessels.]

All persons employed in any capacity on board any vessel arriving in the United States are to be detained on board (DOB) by the master or shipping agent until admitted or otherwise permitted to land by an immigration officer.

The shipping agent, who is usually aware of a ship's arrival 24 hours in advance, is responsible for contacting INS as to the arrival of a foreign vessel and arranging for the inspection. If notice is given in the morning, the INS inspection usually occurs during the day. If contact is made later in the day, the inspection may take place at night. Typically, an INS inspector has no advance notice of the day's schedule. Although an arrival report is published daily in the local newspaper identifying ships that are due, ships do not always arrive on schedule.

Current law requires the owner, agent, consignee, master, or commanding officer of every vessel arriving in the United States from a foreign place or from an outlying possession of the United States to present to the immigration officer at the port of arrival a manifest [INS Form I-418] listing the names of all aliens employed on the vessel. The manifest must include the positions held by the crew members, when and where they were respectively shipped or engaged, and those to be paid off or discharged in the port of arrival. 8 USC Section 1281(a).

In addition, the master, captain, or agent, with few exceptions, must prepare a complete set of INS Forms I-95 [crewman landing permit] for each alien crewman on board. 8 CFR Section 251.1. The forms are supplied by INS and are usually provided to the ship by the shipping agent. Copies of these forms are retained by the immigration officer for later submission to the INS Central Office for statistical purposes.

Crewmen applying for landing privileges must make application in person before an immigration officer, present whatever documents are required, and be photographed and fingerprinted [as the district director may require]. Such crewmen must establish to the satisfaction of the immigration officer that they are not subject to exclusion under any provision of the law and thet they are entitled to landing privileges in the United States. INS inspectors are provided with a service "lookout" book, which is compared to the crew list to identify undesirables. If there is no match, no indication that the individual will jump ship, and the above mentioned requirements have been met, the crewman is given liberty.

When an alien crewman is refused a conditional landing permit for any reason, the Form I-95 presented by him at time of examination is endorsed "permission to land temporarily at all US ports is refused" and is given to the master or agent of the vessel. [On Soviet ships, the seamen's papers are usually kept by the Captain or radio operator throughout the voyage]. In addition, the alien crewman's name is listed on the INS Form I-410 [receipt for crew list] which is delivered to the master of the vessel upon completion of the examination of the crew. The inspector also completes an INS Form I-259 [notice to detain, remove or present aliens] listing all persons who have been denied landing permits and directing the owner, agent, consignee, charterer, master, commanding officer or officer in charge to detain the crewmen. Notification is subsequently made by the inspector to the chief of investigations or the chief patrol agent at that port, and those nearest to all other ports of call, to insure that an appropriate check is made to prevent such crewmen from absconding.

Upon completion of the examination of each crewman listed on the manifest of the arriving vessel, the examining immigration officer notes the alien's status on the Form I-418 opposite the crewman's name. The officer then signs his name, title and date of the inspection. 8 CFR Section 251.1(d).

Current law also requires that the master or agent submit a completed Form I-418 upon departure, reflecting any changes in the crew. If there are no changes in nonresident alien crew upon departure, that fact is to be noted on the form. 8 USC Section 1281(c) and 8 CFR Section 251.3. In the New Orleans district, responsibility for these departure lists is assigned to the Border Patrol, which is responsible for crewmen control. However, the forms are sent to the INS Inspections office at the airport, not to Border Patrol headquarters.

While there is no INS requirement for a departure inspection, crewmen on ships from Communist-controlled countries and crewmen from Communist-controlled countries on other vessels may be mustered when deemed appropriate.

Although crewmen may legally enter the United States if they have a valid visa in their passports, entire crew lists [Form I-418] are usually taken to the US consular office and visas or a visa waiver, pursuant to the authority contained in Section 212(d)(4) of the Act, is obtained. In the case of a visaed crew list, the visa is placed directly on the form, allowing all of the crewmen to come ashore.

Soviet and Soviet-bloc ships, which seldom seek clearance for entire crews [visaed crew list] and are ineligible for visa waivers, sometimes transmit advance notice of their arrival to the State Department to gain clearance for certain members of the crew. Once approved, an IBEX cable is sent to the INS Central Office. Receipt of such a telegram indicates that the Department of State has examined the crew list of a specific Soviet-bloc vessel and has determined which of the crew members are eligible for temporary admission to the United States, pursuant to section 212(d)(3)(b) of the Act.

Thus, before INS inspectors board a Soviet ship, a check is made to determine if an IBEX cable has been received. In the case of a Soviet ship, if there is no visa [e.g., individual visa or visaed crew list] and no IBEX cable, there is no shore leave for the crew. However, inspectors, at their discretion, may "parole" some of the officers to conduct the ship's business ashore, pursuant to the provisions of section 212(d)(5) of the Act.

If no advance notice of arrival is received from the Central Office or from the State Department [i.e. IBEX cable], the arrival of any crewman documented as being a Soviet-bloc national is to be reported to the INS Associate Commissioner of Examinations.

In the case of the M/V Marshal Konev, there was no visaed crew list and no IBEX cable. As a result, none of the ship's crew were technically eligible for shore leave. However, the captain and three of the ship's officers were paroled into the United States by Weldon and Goodpaster.

Usually, only one INS inspector boards the ship. In the case of the M/V Marshal Konev, two inspectors conducted the examination. At the time, INS was short of journeymen inspectors and permanent employees, and had hired several temporary employees. In fact, half of the fourteen inspectors in New Orleans were temporary employees. Although these employees were originally intended to work at the airport, they were routinely assigned to ship inspections.

At the time of the Medvid incident, Jeffrey Weldon had been employed by INS as an inspector for about 2-1/2 months. He had trained with another inspector for about a month. As an inspector, Weldon was assigned either to airport or seaport duties and usually worked alone. However, on October 24, 1985, Weldon was assigned to work with Terry Goodpaster, a former communications operator with the Border Patrol who had been working for INS as an inspector for three weeks. Goodpaster had been assigned to seaport duties for only two weeks. Weldon and Goodpaster were both temporary inspectors. As such, they received no formal schooling, only on-the-job training and a manual with instructions for conducting inspections.

Although INS inspectors are supposed to see each crewman with their passport or seaman book, the Soviets do not always muster their crews. As a result, these inspections can sometimes be time consuming and difficult. Since the majority of the crew is usually detained anyway, there evolved an unauthorized procedure whereby inspectors in New Orleans neglected to physically view each crew member.

Weldon, the more experienced of the two inspectors, had inspected a Russian ship previously where the entire crew was mustered. He was later advised - although he does not now recall who advised him - that it wasn't necessary to muster the entire crew in cases where the crew was going to be detained on board. As a result, Weldon and Goodpaster did not insist upon inspecting each individual member of the crew of the M/V Marshal Konev. When they boarded the ship, they saw only those individuals who were paroled into the United States to conduct the ship's business and possibly 4-5 crewmen when they boarded.

At the time of the Medvid incident, existing INS operations instructions referred generally to inspection of the "crew," and made no specific reference to individual crew members. Although this was clearly implied in the instructions, INS has since clarified the procedures by specifying that all individual crew members are to be inspected. See OI 252.1(c)(1), revised 3/14/86. In addition, new inspectors no longer train with other new inspectors in the New Orleans district.

Apparently, the I-95 cards were not completed for each crewman on board the M/V Marshal Konev prior to the INS inspection, allegedly because the ship had exhausted its supply of forms. Goodpaster and Weldon disagree as to their recollection on this point. Goodpaster maintains that forms were not procured and subsequently completed because all members of the crew, with the exception of the captain and three officers, were to be detained on board. Since it was late in the day, the agents saw no point in spending the time to complete forms on each of the 39 crew members. Weldon is just as certain that the forms were completed and copies returned to the inspections office. Despite attempts by INS Central Office, the records have never been located.

If, as contended by Goodpaster, the forms were never completed, then compliance with the regulation was not met by the master and shipping agent. However, such compliance was seemingly waived by the inspectors if, in fact, they failed to insist that the forms be completed.

3. CREWMEN CONTROL

Prior to the enactment of the 1952 Immigration and Nationality Act, the Senate Judiciary Committee addressed problems arising from the conflicts between immigration laws designed to control the entry of aliens and certain navigation laws designed to promote and protect the welfare of seamen. The Committee found loopholes in existing law which resulted in serious abuses by alien seamen who deserted their ships and remained illegally in the United States. See: The Immigration and Naturalization Systems of the United States, Report of the Committee on the Judiciary pursuant to S. Res. 137, Report No. 1515, 81st Cong., 2d Sess. (1950).

Based upon the recommendations of the Committee, Congress adopted, in the 1952 Act, more stringent controls aimed at assuring the departure of alien crewmen who are granted temporary leave in the United States.

a) Current Law Regarding Crewmen

The responsibility for crewmen control lies with the US Border Patrol in port cities, such as New Orleans, where the agents are normally assigned to border interdiction duties. In areas where Border Patrol agents are not physically located, such as New York City, this responsibility generally falls to INS Investigators. Regardless of whether the law is enforced by the Border Patrol or by INS investigators, the procedures are fundamentally the same.

Under the Act, all persons employed in any capacity on board a vessel arriving in the United States are to be detained on board the vessel by the master or shipping agent until admitted or otherwise permitted to land by immigration authorities. 8 CFR Section 252.1(a). In order to "enter" the United States legally, an alien crewman must be examined by an INS inspector and be granted a conditional permit to land temporarily or be paroled into the country pursuant to the provisions of section 212(d)(5) of the Act.

If entry is denied, the crewman is detained on board the ship for the duration of the ship's stay in port. "However, neither the 1952 Act nor the current regulations require a notice to detain, and an absolute liability is now imposed on the owner, master, etc., without any further notice to prevent the landing of the crewman unless the crewman is granted a conditional landing permit." 2 Gordon & Rosenfield, Section 6.2a(4) at 6-11, 6-12 (1986).

Current law requires the owner, agent, consignee, master, or commanding officer of a vessel to report to an immigration officer, in writing, as soon as discovered, all cases in which any alien crewman has illegally landed in the United States from the vessel, together with a description of such alien and any information likely to lead to his apprehension. 8 USC Section 1281(b). This includes: name; nationality; passport number; personal description; circumstances and time of such illegal landing or desertion of such alien crewman; and any other information and documents which might aid in his apprehension. "Failure to file notice of illegal landing or desertion and to furnish any surrendered passport within 24 hours of the time of such landing or desertion becomes known shall be regarded as lack of compliance with section 251(d) of the Act." 8 CFR Section 251.2.

A fine of $1,000 may be imposed on the owner, agent, etc., for each alien crew member ordered detained on board who absconds or leaves their vessel. 8 USC Section 1284. Although liability is absolute, as a practical matter fines are not imposed unless the master or commanding officer has willfully or negligently allowed the seaman to come ashore illegally.

According to the Border Patrol Handbook, crew members who have been refused landing permits [detained on board] but who are later located on shore are to be handled under the usual deportation proceedings. The immigration officer takes the crewman into custody, and requires the master or commanding officer of the vessel on which the crewman arrived to receive and detain him on board. The crewman is then ordered to be deported from the United States at the expense of the transportation line which brought him to the United States. Current law does not require that the procedures for deportation outlined in 8 USC Section 1252 be followed. See 8 USC Section 1282(b). Thus, under current law, the crewman is not entitled to an administrative review of his case.

As previously discussed, the INS inspectors assigned to the M/V Marshal Konev failed to examine each individual crew member aboard the ship. The fact that Medvid was not personally advised that he had been officially detained on board did not alter his status. See *Matter of Di Santillo*, Board of Immigration Appeals (Interim Decision #2943, May 24, 1983). Technically, when Medvid deserted the ship, he was in violation of US law and subject to summary deportation.

Although there is no conclusive evidence that the master or the shipping agent who were charged with the responsibility of detaining Medvid aboard the ship were aware of his desertion, they were technically in violation of the law and, as such, were subject to fine.

Technical violations also appear to have occurred when the shipping agent, at the direction of the Soviet mate, sought the assistance of six or seven unknown crewmen to retrieve Medvid from the shore and return him to the ship. Although their time ashore was brief and only temporary, these men did enter upon US soil in violation of immigration law. *Matter of S.S. Norness*, 4 IN 228 (1951).

b) Authority of Border Patrol Agents

According to the Border Patrol Handbook, Chapter 17, an arrest is defined as "an actual or constructive restraint, seizure, or detention of a person, performed with the intention of taking the person into custody and so understood by the person detained." Temporary forcible restraint "is for the purpose of conducting further interrogations of persons reasonably suspected of violations of law. Information obtained from these interrogations may provide probable cause for subsequent arrests."

Section 287(a)(2) of the Act empowers such agents to arrest without warrant, (1) any aliens who in their presence or view are entering or attempting to enter the US in violation of any immigration law or regulation; or (2) any aliens in the US, if the agents have reason to believe they are in the US in violation of any immigration law or regulation and are likely to escape before warrants for arrest can be obtained.

Border Patrol Agents may interrogate without warrant any aliens or persons believed to be aliens as to their right to be or to remain in the U.S. Before questioning individuals, non-uniformed agents are to show their credentials and state that they are Border Patrol Agents. To guarantee their own safety and the safety of others, patrol agents may frisk or pat down the outer clothing of persons stopped for questioning if it is believed that they may be armed and dangerous. 8 USC Section 1357. Border Patrol Agents are advised to handcuff persons in custody when they believe it necessary to either prevent escape, control subjects or prevent injuries to anyone.

Agents Spurlock and Bashaw exercised their clear authority when they took Medvid into custody. The agents, who were not in uniform, apparently followed procedures and identified themselves to Medvid. The seaman was frisked, but no weapons were found. He was then placed in temporary forcible restraint and taken to the Border Patrol Sector Office where he was interrogated through the use of an interpreter. Medvid was subsequently placed under arrest and ordered to be deported from the United States.

Regardless of the propriety of the decision to return Medvid to the ship, the practice of transferring custody of a deserting crewman from the Border Patrol Agent to the respective shipping agent, rather than requiring the Patrol Agent to personally supervise the seaman's return to the ship, is recognized by the courts as an acceptable procedure. While the alien's rights of due process must be honored, *United States v. Shaughnessy*, 338 U.S. 537, 544 (1950), the shipping agent may take steps to physically detain the individual aboard ship. See *Papagianakis v. The Samos*, 186 F. 2d 257, 262 (4th Cir., 1950), *cert. denied* 341 U.S. 921 (1951). The fact that Agent Bashaw gave the shipping agent a set of plastic handcuffs is consistent with this practice, especially since Medvid had previously attempted to run from Spurlock and the shipping agent had an absolute duty to detain the seaman on board ship.

c) Use of Interpreters

The Border Patrol Handbook states that if the alien crewman being questioned does not speak English, the patrol agent is to determine whether an interpreter will be needed. Even though the alien is willing to proceed without one, if there is any doubt, the patrol agent should defer further action until an interpreter is available. If the interpreter is an INS employee, no oath is necessary, but the person must be identified for the record. If the interpreter is not an INS employee, the person should be identified and qualified for the record.

The Handbook discusses possible difficulties in the use of interpreters and alerts patrol agents as follows:

> It is imperative that patrol agents instruct interpreters in their duties and strictly limit them as to speech . . . Under no circumstances should interpreters try to explain answers. Interpreters must understand that they act only as voices – nothing else. Because it is a natural impulse

> for interpreters to try to explain or clear up questions, this must be constantly guarded against. Patrol agents will lose control of situations and be unaware of what is transpiring unless they insist that the interpreter repeats all answers verbatim. If any explanations are required, patrol agents -- not the interpreters -- should rephrase or change the questions. In this manner, patrol agents know exactly what is being adduced and are not being given summaries by interpreters.

Procedures also allow for the substitution of interpreters, if needed, part way through an interview, to check not only the veracity and cooperation of the alien but the ability and performance of the first interpreter.

Agent Spurlock followed procedures accordingly by contacting the New York INS district office for assistance in locating a Ukrainian interpreter. With approval from the supervisor of interpreters, Spurlock contacted Mrs. Irene Padoch in New York City to act as a Ukrainian interpreter in his interrogation of Medvid.

Mrs. Padoch was initially appointed as a temporary or intermittent interpreter with the INS in March of 1974. She worked on an occasional basis interpreting in Ukrainian and Polish until November of 1984. At that time, she requested that her name be removed from the available interpreters list, as she was no longer interested in working for INS.

According to her personnel records, Mrs. Padoch was reviewed a few months after her initial appointment and her work was deemed favorable. CSCE investigators found no evidence of impropriety or dissatisfaction with her work. To the contrary, Mrs. Padoch apparently acted as Ukrainian interpreter in several difficult administrative proceedings, where an exact interpretation was needed quickly, and on at least one occasion her services were specifically requested by authorities.

INS procedures require intermittent interpreters to take an annual oath of office. Usually, when an interpreter is needed, several hours notice is given to the supervisor in New York who then arranges for the interpreter to come to the New York district office to assist in the interpretation. In cases where the yearly sworn statement has lapsed, the oath is given to the interpreter when he/she comes into the office. This practice has developed over the years because it is more efficient to do this on an as needed basis.

Mrs. Padoch's last sworn statement expired in November of 1984. Despite the formality of the oath of office, the lack of a current statement has no significant bearing on the case at hand, especially since the New York supervisor was aware of the request to use Mrs. Padoch's services and her abilities had never been previously questioned.

While Medvid was at the Naval Facility BOQ in Algiers, LA, US officials contacted Mrs. Padoch by telephone. The Department of State contract interpreter, Ross Lavroff, spoke with Mrs. Padoch at that time. Lavroff later indicated to CSCE staff that her abilities in the Ukrainian, Russian and English languages were questionable.

Undeniably, Mrs. Padoch has a heavy accent when speaking in English. By her own admission, she does not speak Russian, although she is familiar with certain terms. As to her ability to speak Ukrainian, there is no reason to believe that Mrs. Padoch was unable to communicate with Medvid, despite Lavroff's claims. Several times during the evening that Medvid apparently jumped ship, the young seaman exhibited frustration and impatience with the people around him. If he had been unable to communicate with Mrs. Padoch, there is every reason to believe that Spurlock and Bashaw would have had some indication of this in Medvid's behavior during the hour long telephone call.

It does appear, however, that Spurlock lost control of the interview at several points. Spurlock indicated that Mrs. Padoch and Medvid seemed to converse between themselves on several occasions and Mrs. Padoch admits that Medvid repeatedly attempted to speak with her, not to simply use her to speak with Spurlock.

Spurlock also indicated that he believed the phrase "moral and political reasons" was coined by Mrs. Padoch, not Medvid. Mrs. Padoch admits that this is true, but states that while the phrase was in her words, Medvid was indicating that he wanted asylum.

Clearly, the Border Patrol procedures outlined above suggest that if Spurlock lost control of the conversation and believed that Mrs. Padoch was answering the questions for Medvid, then he should have re-contacted the New York office and arranged for another interpreter. Unexplainably, this was not done.

d) Incidents of Potential International Impact and Immediate Action Cases

The Border Patrol Handbook devotes an entire chapter (Chapter 12) to crewman control and emphasizes in opening comments that knowledge and complete familiarity with laws, regulations, operations instructions and the administrative manual relating to the Coastal Control Program is mandatory for Patrol Agents assigned to crewman control duties. "Border Patrol Agents who have not received the necessary training in inspection procedures will not be assigned to such duties," p. 12-1.

According to the Handbook:

> Special attention must be given to the provisions of Operation Instruction 103.1(g)(1) on reporting incidents of potential international impact and unusual or complex matters, and Section 208, 8 CFR Section 208.1-16 and OI 208.1-15 relating to political asylum procedures . . . Guidance provided in Section 208.8 regarding the handling of politically sensitive and other immediate action cases must be complied with. *Cases falling within the criteria listed in OI 208.8(a) must be immediately brought to the personal attention of the immediate supervisor of the Patrol Agent conducting the inspection and, or the District Director. Any case in which a question exists as to the sensitivity of the matter should be referred to the District Director for a decision in accordance with OI 208.8(b).* [Emphasis added.]
>
> All Border Patrol Supervisors and Patrol Agents responsible for conducting ship inspection and other coastal control duties must be well versed in inspection procedures and, above all, in special procedures regarding the handling of politically sensitive and other immediate action cases.

p. 12-1 (REV. 4/1/85).

Operation Instruction 103.1(g)(1) states:

> District directors and chief patrol agents are responsible on a 24-hour basis for insuring that information concerning any nonmilitary incident which could have an adverse impact on the conduct of foreign relations occurring in their area of responsibility is brought to their attention without delay and that telephone reports be made immediately to the Associate Commissioner, Enforcement, or the Associate Commissioner, Examinations. Reports submitted after hours, weekends or holidays will be made to the Communications Branch . . . which will in turn convey the information to the appropriate Service official. District directors and chief patrol agents will keep their respective regional officials advised. (*Revised*)
>
> The report of the incident will include information on its development, proposed courses of action, and actions already taken, if appropriate. The term "nonmilitary incidents which could have an adverse impact on the conduct of our foreign relations" is not defined, but any doubt should be resolved in favor of reporting.
>
> Central Office officials receiving reports of incidents will telephone the Department of Justice Information Center promptly, at any hour of the day or night . . . and will request referral to the Duty Officer. The official receiving the report from the field or from the Communications Branch will also be responsible for notifying other Central Office officials, as appropriate to the circumstances. The officials listed below are authorized to make decisions and mobilize men and material to support any operations connected with an incident. (*Revised*)
>
> Executive Assistant to the Commissioner . . .
> Associate Commissioner, Enforcement . . .
> Associate Commissioner, Examinations . . . (*Revised*)

Cases requiring immediate action are discussed in Operation Instruction 208.8 which provides:

> *Processing Asylum Request. Immediate Action Cases.*
>
> (A) Definition
>
> (I) A request (or imminent request) for asylum which is politically sensitive or involves the possibility of forcible repatriation;
>
> (II) Any National of the Soviet Union;
>
> (III) Any National of East Germany, Romania, Poland, Hungary, Czechoslovakia, Bulgaria, Mongolia, Cuba, Albania, the People's Republic of China, North Korea, Vietnam, Laos or Cambodia, who is present in the United States as part of an official visit, formal cultural or athletic exchange, exchange student program, or state-owned business or enterprise activity, or who is in transit through the United States in such capacity;
>
> (IV) Any foreign diplomat, foreign consular officer, or foreign official, regardless of the country;
>
> (V) Any other alien who asserts there is a serious threat of forcible repatriation to himself or to his family;

> (VI) Any request for asylum which for other reasons presents special problems calling for prompt attention.
>
> (B)Notification. When it comes to the attention of any Service employee that a person described in paragraph (A) above may be seeking asylum, the district director will be notified immediately and furnished all the pertinent facts of the case . . . If the district director agrees that the asylum applicant falls into the immediate action category, he will expeditiously relate the facts of the case to the Associate Commissioner, Examinations, Central Office, or the Central Office duty officer, and the appropriate regional official. . . [who] will alert the Service's Public Information Officer and the Department of State's operation officer. . .
>
> (C)Interview of Asylum Applicant. After notifying the Associate Commissioner, Examinations, the district director will immediately assign an officer to interview the asylum applicant under oath using Form I-589 . . .

Spurlock has continually maintained that, based upon his interview with Medvid through the use of the interpreter, he believed Medvid was simply a deserter who did not want to return to his ship. Based upon the interview and the interpretations of Mrs. Padoch, Spurlock has further maintained that Medvid did not want asylum. For that reason, he did not believe the provisions regarding immediate action cases were relevant.

INS later adopted the position that, based upon Medvid's Soviet nationality and the overall situation, Patrol Agents Spurlock and Bashaw should have contacted their supervisor pursuant to OI 208.8. Personnel actions were subsequently instituted against the agents for failing to follow proper procedures. The Administrative Law Judge in the case ruled in favor of Spurlock and Bashaw. The case is currently on appeal to the Merit Systems Protection Board.

In view of the pending legal action, further comments on this point are not appropriate at this time. However, it should be noted that INS recently revised OI 103.1(g)(1) as follows:

> (A) District directors and chief patrol agents are responsible on a 24-hour basis for insuring that information concerning any nonmilitary incident occurring in their area of responsibility which could have an adverse impact on the conduct of foreign relations is brought to their personal attention without delay and that telephone reports be made immediately to the Associate Commissioner, Enforcement, or the Associate Commissioner, Examinations. District directors and chief patrol agents will keep their respective regional officials advised.
>
> The manner in which we handle or relate to foreign nationals in many situations can have foreign policy implications. Some of these situations are:
>
> – Diplomatic passport holders at entry;
>
> – Soviet nationals seeking asylum or expressing a reluctance to depart the United States voluntarily;
>
> – Any life-threatening incident in which Service officers participate with foreign nationals;

> – Crewmen from flag vessels of Soviet-bloc nations seeking asylum;
>
> – Disturbances at an international bridge or tunnel;
>
> – Accredited foreign government representatives seeking information about or contact with their nationals whether in Service custody or not.
>
> This is only an illustrative list and not all such interactions will result in incidents with international implications. The phrase, "nonmilitary incidents . . . which could have an adverse impact on the conduct of foreign relations" cannot be defined inclusively. Any doubts should be resolved in favor of reporting.
>
> *All immediate action claims under OI 208.8 must be reported in this manner as well as the case of any Soviet citizen whose departure from the United States is being required by INS.* [Emphasis added.]
>
> The report of the incident will include information on its development, proposed courses of action, and actions already taken, if appropriate.
>
> The official receiving the report from the field or from the INS Communications Center will also be responsible for notifying other Central Office officials, as appropriate, to the circumstances . . .
>
> (B) Reports submitted after hours, weekends or holidays, will be made to the Central Office Communications Center . . . which will in turn convey the information to the appropriate Service official.
>
> Central Office officials receiving reports of incidents, if they concur that the situations have potential international impact, will telephone the Department of Justice Information Center promptly . . . and will request referral to the Duty Officer.

TM 142 (7-15-86).

e) Authority to Remove an Alien Crewman From his Vessel

Any alien crewman refused a conditional landing permit or whose conditional landing permit has been revoked but who alleges that he cannot return to a Communist, Communist-dominated or Communist-occupied country because of fear of persecution on account of race, religion, or political opinion is to be removed from the vessel for interrogation. Following the interrogation, the district director having jurisdiction over the area where the alien crewman is located may authorize parole of the crewman into the United States under the provisions of section 212(d)(5) of the Act. If parole is not authorized, the crewman is to be returned to the vessel on which he arrived. 8 CFR Section 253.1(f).

When Border Patrol and INS District authorities in New Orleans discovered that a potential asylum seeker had been placed back on board a Soviet vessel, proper notification was given to the INS Regional and Central Offices, who in turn notified the Departments of Justice and State. Pursuant to instructions of the Regional Commissioner, the Border Patrol boarded the vessel to remove seaman Medvid for questioning. Once aboard, the agents discovered that Medvid had been sedated and was unconscious. At this point, the decision was made to allow Medvid to remain on board the ship until he regained consciousness.

Regulations clearly provide for the removal and interrogation of seamen who have indicated that they may be requesting asylum. Based upon the comments written on the Form I-213 (e.g., "political and moral reasons") and the information received by INS indirectly from Mrs. Padoch, the INS was on notice that a request for asylum may have been made. For these reasons, it was within the authority of INS to physically remove Medvid from the ship, even though he was unconscious.

f) Advice of Rights

Miranda warnings are required to be given to persons in custody who are suspected or accused of having committed a crime. However, during the preliminary stages of an investigation, persons who are stopped and questioned or who are temporarily (forcibly) restrained for further questioning, but who have not been arrested, are not considered to be in custody and need not be given the Miranda or Administrative warnings. "Once a determination has been made to institute deportation or exclusion proceedings against aliens, the Administrative Warning (Form I-214A) must be given," Border Patrol Handbook, 17-2. After Miranda or Administrative warnings have been given, arrestees should be requested (never coerced or forced) to sign waivers of their rights. In the event a signature is not obtained, any reactions of arrestees should be noted on the interview log. In addition, any special requests should be similarly noted.

Since the crewmen control laws are not criminal in nature, the Miranda warning is not necessary, and since crewmen who violate their status are subject to summary deportation, the need for Administrative warnings is questionable. As a practical matter, however, crewmen are usually advised of their rights pursuant to 8 CFR Section 287.3 and are requested to initial the statement to this effect on the I-213.

In this case, Spurlock maintains that he advised Medvid of his rights. Mrs. Padoch contends that she was not asked to interpret that information to the seaman. The Form I-213 indicates that Medvid was advised of his rights, but Medvid did not initial the form. However, Spurlock apparently did not complete the form until after Medvid had been turned over to the shipping agent and taken back to the ship.

g) Entry Without Inspection

When questioned by Patrol Agent Spurlock, through the interpreter, Mrs. Padoch, Medvid indicated that he had jumped ship prior to the INS inspection. At the time, Spurlock was clearly unaware that the INS inspectors had not followed procedures and had not examined each crew member. Thus, Spurlock noted on the I-213 form that Medvid's status was "EWI" or Entry Without Inspection instead of "DOB" or Detained on Board.

Although the charges are technically different, the procedures for processing crewmen are the same in each status. The erroneous entry has no significant bearing in this case.

h) Fingerprints

The Border Patrol Handbook notes that alien crewmen who are more than 14 years of age and who are willfully in violation of status, are to be fingerprinted and photographed. Fingerprint charts of apprehended aliens are to be mailed on a daily basis directly to the FBI Identification Division by each Border Patrol station. OI 252.4(d).

During the CSCE's investigation, it was discovered that the FBI does not have a copy of Medvid's fingerprints on file, suggesting that only one fingerprint card was completed by Agent Spurlock. That card, which was not signed by the crewman, was placed in Medvid's A-file and later taken to the INS District Office in New Orleans.

According to Agent Spurlock, the shipping agent arrived at the station before Spurlock had completed all of the necessary paperwork. Agent Spurlock contends that through an oversight he neglected to have Medvid sign the card. No explanation was offered regarding the failure to prepare a second fingerprint care for submission to the FBI.

4. ENFORCEMENT OF SENATE SUBPOENA

The US Senate Committee on Agriculture, Nutrition, and Forestry has jurisdiction over: agricultural production, marketing, and stabilization or prices; inspection of livestock, meat, and agricultural products; and the study and review, on a comprehensive basis, of matters relating to food, nutrition, and hunger, both in the United States and in foreign countries.

In November of 1985, immediately following the decision by US authorities to return Medvid to the M/V Marshal Konev, the Committee launched an inquiry into whether foreign seaman have the protection of basic human rights while in US waters. The Committee, acting under its authority derived from the Standing Rules of the Senate, Rule XXVI, then issued a subpoena to Miroslav Medvid to appear and testify before the Committee on November 12, 1985.

a) Subpoena of Aliens

As a general rule, aliens who reside in foreign countries cannot be compelled to respond to a subpoena since they owe no allegiance to the United States. See: *United States v. Best*, 76 F. Supp. 138 (D.C. Mass. 1948); *United States v. Haim*, 218 F.Supp. 922 (S.D.N.Y. 1963); *Gillars v. United States*, 182 F. 2d 962 (D.C.Cir. 1950); and *Blackmer v. United States*, 284 U.S. 421 (1932). However, aliens who come within the jurisdiction of the court may be subpoenaed, regardless of their residency or citizenship. *In re Grand Jury Proceedings: United States v. Field*, 532 F.2d 404, 409-410 (5th Cir. 1976).

Similarly, once an alien lawfully enters and resides in the United States, he becomes bound to obey all the laws of the country not immediately relating to citizenship, and is equally amenable with citizens for any infraction of those laws. It follows, then, that an alien's lack of citizenship does not raise a bar to his being summoned by a Congressional investigating committee. *Eisler v. United States*, 170 F.2d 273, 279 (D.C. Cir. 1948).

b) Service of a Federal Subpoena

Pursuant to Federal Rule, 45(c) of the Federal Rules of Civil Procedure, 28 USC Appendix, service of a subpoena is accomplished by delivering a copy of the subpoena to the person named.

Although the Agriculture Committee had the option of requesting assistance from the U.S. Marshals in service of the subpoena, Committee staff attempted to serve the document themselves. Despite several attempts, the Committee staff were unsuccessful in their attempts to personally serve Medvid. See *Harrison v. Prather*, 404 F. 2d 267, 273 (5th Cir. 1968), (service of a subpoena duces tecum on plaintiff's counsel, as opposed to plaintiff himself, was a nullity).

c) Mechanisms for the Enforcement of a Senate Subpoena

There are three mechanisms for enforcing a Senate subpoena: a civil contempt proceeding; a criminal contempt proceeding; or a contempt proceeding before the full Senate.

The enforcement of a subpoena through a civil action is a way of insuring that the witness fulfills his duty to testify pursuant to the subpoena. Enforcement of a subpoena through a civil contempt action is set forth in 2 USC Section 288, but these provisions in no way preempt the other methods of enforcement.

In a civil contempt proceeding, the Senate must adopt a resolution directing the Senate Legal Counsel to apply to the court for an order compelling the witness to testify. 2 USC Section 288.b(b). The resolution must be reported by a majority of the members of the committee and a report must be filed by the committee which contains a statement of:

> (A) the procedure followed in issuing such subpoena; (B) the extent to which the party subpoenaed has complied with such subpoena; (C) any objections or privileges raised by the subpenaed party; and (D) the comparative effectiveness of bringing a civil action under the section, certification of a criminal action for contempt of congress, and initiating a contempt proceeding before the Senate.

2 USC Section 288.d(c).

On an expedited basis, the court hears the witness' objections, and if found to be unpersuasive, orders the witness to testify. The witness may be recalled by the committee, which may again seek his testimony. If he remains recalcitrant, the court would then be asked to apply sanctions, including incarceration, to induce compliance with the court's order. If ordered, incarceration may last until either the witness agrees to testify, or the committee determines that it no longer needs his testimony.

The United States District Court for the District of Columbia has original jurisdiction over civil actions brought by any authorized committee of the Senate to enforce or prevent a threatened refusal or failure to comply with any subpoena or order issued by the Committee. 28 USC Section 1364.

Criminal contempt proceedings are set forth in 2 USC Sections 192 and 194. If a statement of fact constituting a failure of a witness to testify or produce documents is reported to and filed with the president of the Senate, the Senate can adopt a resolution directing the President Pro Tempore to certify to the relevant United States Attorney the facts concerning a witness' failure to testify. The matter is presented to a Grand Jury, which has the power to indict the witness, which in turn may lead to a prosecution for contempt. If the witness is convicted, he may be made the subject of incarceration for a period of up to one year.

The Senate is considered to have inherent authority, in special cases where the judicial remedies are inadequate or unavailable, to conduct contempt proceedings without resort to judicial process. The authority of the Senate to hold witnesses in congressional contempt has been upheld by the courts. See: *Jurney v. MacCracken*, 294 U.S. 125 (1935); *In Re Chapman*, 166 U.S. 661 (1935). The power to do so, however, has not been exercised in over three decades, as the available judicial remedies have proven adequate.

Since the subpoena was not properly served on Medvid, it is doubtful that the Committee could have prevailed in any attempt to enforce its subpoena.

5. THE ATTORNEY GENERAL'S DEFERENCE TO THE DEPARTMENT OF STATE

It is clear from the chronology of events surrounding the attempted defection of Miroslav Medvid, that the INS and the Attorney General failed to exercise the discretion conferred upon them by the INA.

Initially, INS/Border Patrol assumed control of the situation by sending agents to the ship to remove Medvid for interrogation. When it was discovered that Medvid had been sedated and was unconscious, the decision was made to allow the seaman to remain on board, but to establish a "presence" on the ship. Several hours later, a State Department representative arrived on the scene in New Orleans and, for all practical purposes, assumed the lead role in the affair.

The following day, the INS Regional Office assumed primary responsibility for conducting an investigation into the handling of the case, while the Border Patrol officials from Central Office assumed responsibility for developing a contingency plan for the forced removal of Medvid from the ship, in the event such action became necessary. State Department officials continued to act in their role as negotiator with the Soviets in an attempt to allow US officials to interview Medvid.

Later, pursuant to presidential directive, the Department of State assumed control over the entire proceeding. Such actions have been held by the Supreme Court to be both improper and unconstitutional.

a) Under the Constitution, The Formulation of Immigration Policy is Entrusted Exclusively to Congress

"The Constitution gives Congress power to make all laws necessary and proper for carrying into execution the powers vested by that instrument in the government of the United States or in any department or officer thereof." *Boske v. Comingore*, 177 U.S. 459, 468 (1900), citing Const. art. 1, section 8. "The power to exclude or to expel aliens . . . is to be regulated by treaty or by Act of

Congress, and to be executed by the executive authority according to the regulations so established." *Fong Yue Ting v. United States, 149 U.S. 698, 713 (1893);* see also *Nishimura Ekiu v. United States,* 142 U.S. 651, 659 (1892).

The authority of the Executive in matters concerning immigration is limited to power delegated by Congress through statutes such as the INA, and its inherent power, arising out of the Executive's plenary authority over foreign relations. *Jean v. Nelson*, 727 F.2d 957, 965 (11th Cir. 1984), aff'd in pertinent part, 472 U.S. 846 (1985), citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950).

"Theoretically, the President has an independent source of power concerning immigration policy, *at least with regard to matters that are not the subject of either a statutory mandate or an express prohibition.*" *Jean v. Nelson, supra* 727 F.2d at 965 (emphasis added), citing *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 636-37 (1952) (Jackson, J., concurring). "In practice, however, the comprehensive character of the INA vastly restricts the area of potential executive freedom of action, and the courts have repeatedly emphasized that the responsibility for regulating the admission of aliens resides in the first instance with Congress." *Jean v. Nelson, supra*, 727 F.2d at 965 citing *Knauff, supra*, 338 U.S. at 543; *Fong Yue Ting, supra*, 149 U.S. at 713; *Nishimura Ekiu, supra.*

b) Congress Has Delegated Principal Executive Branch Responsibility Over Immigration Matters to the Attorney General

Congress has given the Attorney General the primary responsibility for deciding on the admission or exclusion of aliens in accordance with the INA. 8 USC Section 1103(a); *Jean v. Nelson, supra*, 727 F.2d at 965. The regulations instituted by the Attorney General for implementation of the INA have the same force and effect as the statute itself, *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954), and the Attorney General may not deviate from the regulations that he has instituted. *Id.* Moreover, the Attorney General, or his designated agent, may not fail to exer cise the discretion which has been granted to him by Congress through statutes such as the INA *Accardi* at 267; 8 USC Section 1103(a).

If the Attorney General deviates from the operative regulations, or fails to exercise his Congressionally conferred discretion, he has denied the alien due process of law. *Id* at 268.

By contrast, the authority of the Secretary of State under the INA is limited to the administration and enforcement of INA provisions as they relate to diplomatic and consular officers, set forth in 8 USC Section 1104 *et seq.*,

> and all other immigration and nationality laws relating to (1) the powers, duties, and functions of diplomatic and consular officers of the United States . . . (2) the powers, duties, and functions of the Bureau of Consular Affairs; and (3) the determination of nationality of a person not in the United States.

8 USC Section 1104(a).

The Department of State is not at liberty to control or coordinate an alien's request for admission, notwithstanding that its attempt to do so may have been in response to an Executive Order from the

President. See, e.g., *Service v. Dulles*, 354 U.S. 363 (1957). Where a statute gives discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to reexamine or to controvert the sufficiency of the evidence on which he acted. *Nishimura Ekiu v. United States, supra*, 142 U.S. at 660. In the words of Justice Frankfurter in *Galvan v. Press,* 347 U.S. 522, 531 (1954),

> [T]hat the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government . . . We . . . must . . . under our constitutional system recognize congressional power in dealing with aliens.

c) The Authority of the Executive in Immigration is Limited, Except Insofar as Foreign Relations May Be Affected

The Executive's administrative activity cannot reach beyondthe limits of the statute that created it. *Immigration and Naturalization Service v. Chadra*, 462 U.S. 919, 953, n.16 (1983). While the President may issue an Executive Order relating to immigration matters, he cannot confer authority on a department or agency in excess of that granted by Congress. "Executive action under legislatively delegated authority . . . is always subject to check by the terms of the legislation that authorized it . . ." *Id.* Regulations promulgated in accordance with an Executive Order cannot override regulations promulgated in accordance with statutes; as long as the latter are in effect, they are controlling. See *Service v. Dulles, supra*.

The President's actions are not statutorily limited in the area of foreign relations, where he has plenary authority. However, if the Executive acts under his foreign relations authority in an immigration matter, it is important that it be known that he is acting in that capacity. "When the Federal Government asserts an overriding national interest as justification for a discriminatory rule which would violate [constitutional protections], due process requires that there be a legitimate basis for presuming that the rule was actually intended to serve that interest." *Hampton v. Mow Sun Wong*, 426 U.S. 88, 103 (1976). "For the purpose of judicial review, it is important [for the court] to know whether we are reviewing a policy decision made by Congress and the President or a question of [agency or departmental policy]." *Id.* at 105.

d) The Attorney General Must Exercise the Authority and Discretion Vested in Him By Congress

The Attorney General must exercise the authority and the discretion vested in him by Congress through statutes such as the INA. In all cases "in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts . . " *Nishimura Ekiu v. United States, supra*, 142 U.S. at 660 (Citations omitted). If the word "discretion" means anything in a statutory or administrative grant of power, it means that the recipient must exercise his authority according to his own understanding and conscience. *United States ex rel. Accardi v. Shaughnessy, supra*, 347 U.S. at 266-267. Moreover, while courts cannot review the exercise of administrative discretion nor themselves exercise it, they can and should compel its exercise where the officer vested with the discretion has failed to do so. *United States ex rel. Accardi v. Shaughnessy*, 206 F.2d 897, 902 (2d Cir. 1953) (dissenting opinion of J. Frank).

The INA grants the Attorney General the authority to delegate his powers under that statute only to employees of the Immigration and Naturalization Service or other Justice Department officials. Once regulations have been established to implement the provisions of the INA, those regulations may not be deviated from, since "regulations have the force and effect of law." *United States ex rel. Accardi v. Shaughnessy, supra*, 347 U.S. at 265. "This applies with equal force to the Attorney General," *id.* at 267, so that once the Attorney General has by regulation established regulations delegating power to the INS or to some other Justice Department official, "so long as the regulations remain operative, the Attorney General denies himself the right to sidestep the [official to whom the power has been delegated] or dictate [the] decision in any way." *Id.*

e) Failure of the Attorney General to Exercise His Authority and Discretion in Immigration Matters Deprives an Affected Alien of Due Process

Failure of the Attorney General to exercise the authority and the discretion vested in him by Congress as to the admission of aliens deprives an affected alien of due process. While it has been held that "an alien seeking admission has no constitutional rights regarding his application," *Landon v. Placencia*, 459 U.S. 21, 32 (1982), nevertheless, "an alien, who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population" is entitled to due process under the fifth amendment. *Kaoru Yamataya v. Fisher* [The Japanese Immigrant Case], 189 U.S. 86, 101 (1903). It is also well established that "the fourteenth amendment to the constitution is not confined to the protection of citizens." *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

> [o]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality. In the latter instance the [Supreme] Court has recognized additional rights and privileges not extended to those in the former category who are merely on the threshold of initial entry.

Leng May Ma v. Barber, 357 U.S. 185, 187 (1958). While an excludable alien "must be content to accept whatever statutory rights and privileges they are granted by Congress," *Jean v. Nelson, supra*, 727 F. 2d at 968, nevertheless, "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *United States ex rel. Knauff v. Shaughnessy, supra*, 338 U.S. at 544 (Citations omitted.) Deviation from Congressionally authorized procedures is therefore a denial of due process to an affected alien.

6. INS FAILURE TO PREVENT THE DEPARTURE OF MEDVID

In its review of agency and committee files, the CSCE discovered several legal memoranda concerning the validity and the enforceability of the subpoena issued to Miroslav Medvid by the Committee on Agriculture, Nutrition, and Forestry. The memoranda address questions as to the scope of that committee's jurisdiction, the validity of the service of the subpoena, the right of the State or Justice Department to contest the subpoena, and so forth. All of these discussions ignore the question at hand. The plain meaning of a statute must be adopted, however severe the consequences. *Jay v. Boyd*, 351 U.S. 345, 357 (1956). The same is true of regulations, such as those cited above, for the implementation of a statute, since such regulations have the force and effect of law. *United States ex rel. Accardi v. Shaughnessy, supra*, 347 U.S. at 265.

8 CFR Section 215.3 provides, in pertinent part:

> The departure from the United States of any alien within one or more of the following categories shall be deemed prejudicial to the interests of the United States:
>
> . . .
>
> (h) Any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee . . . or body in the United States . . .

8 CFR Section 215.2(a) provides in pertinent part:

> Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of [section] 215.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with an order directing him not to depart, or attempt to depart, from the United States until notified of the revocation of the order.

There is no provision for the exercise of discretion on the part of the departure control officer, and the Attorney General may not deviate from his published regulations. *United States ex rel. Accardi v. Shaughnessy, supra*. The plain meaning of a statute must be adopted. *Jay v. Boyd, supra*. The same is true of these regulations, which have the force and effect of law. Having been made aware that Medvid was needed in connection with a proceeding soon to be conducted by a legislative committee, the INS was obliged to prevent Medvid's departure from the United States, and its failure to do so was a violation of law.

Part II. OTHER INCIDENTS

In addition to the Medvid case, Section 23(a)(1)(B) of S.Res. 353 directs the Commission to review "instances in which an individual . . . who was a national of the Soviet Union or a Soviet-bloc Eastern European country [defined as Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and Romania], requested political asylum in the United States and was returned to the authorities of his country in violation of any United States, state, or local law . . ." Overall recommendations to Congress by the Commission are to include consideration of these cases.

Based upon leads developed during the course of the Medvid investigation, the Commission staff reviewed numerous INS and State Department case files on Soviet and Soviet-bloc nationals who were either repatriated or detained and questioned by US officials as to whether they were departing the United States voluntarily. In addition, the investigators reviewed INS reports on deserting crewmen and alien apprehensions.

A. REPATRIATION CASES

The following cases have been identified either as instances where US officials deviated from prescribed procedures established for the implementation of the Immigration and Nationality Act or situations which raise issues similar to those found in the Medvid case.

1. CASE STUDIES

a) Piotr Kalitenko and Gregorij Sarapushkin

In developing leads to identify other cases of relevance to the investigation, the Commission noted published reports of the Kalitenko/Sarapushkin cases, which contended that the two Soviets had landed in a small boat off the Alaskan coast and were sent back to the USSR despite their requests for asylum. Upon review of the case file, it became apparent that these statements were misleading, at best.

INS files reveal that on August 7, 1965, Piotr Kalitenko and Gregorij Sarapushkin landed on the Alaskan coast in a small boat made from walrus skin stretched over a frame of bent metal tubing and wood. The men, identified as Soviet nationals, were interviewed by INS authorities and told a convincing story about plans to go to an offshore island to gather mushrooms which they could sell to augment their income. According to the men, one of their two outboard motors failed and they drifted accidently onto US soil. One of the men, Sarapushkin, did not have the required authority to travel and was obviously concerned about possible repercussions upon his return to the Soviet Union. However, INS records indicate that both men insisted upon returning immediately to the Soviet Union. Both men insisted that they did not want asylum.

Since the men were in technical violation of US law, having no authority to land, they were given the option of going through deportation proceedings or agreeing to voluntary departure. Wanting to return home as quickly as possible, the two men agreed to voluntarily depart the US.

For reasons that appear somewhat unclear at this point in time, the original decision by INS to take the two men to Soviet authorities in Anchorage was cancelled and the US Coast Guard was instructed to return the men to an island within Soviet territory, approximately three miles away. Before the men could be returned, however, they changed their minds and requested asylum. In the meantime, the Department of State countermanded the INS order. [The records cited no legal authority for this action.]

Pursuant to Department of State instructions, the Soviets were taken to Anchorage where they were met by representatives from the Department of State and the Soviet Embassy who questioned them as to their desire to seek asylum. [The file indicates that the Department of State advised the Soviets of the defections, but contains no explanation as to why this was done.] Kalitenko confirmed that he wanted asylum, but Sarapushkin requested more time, apparently concerned that he would be punished if he returned to the USSR. Although the Soviets insisted upon seeing Sarapushkin alone, US officials denied their request. Sarapushkin later agreed to return to the Soviet Union, then regretted his decision and again requested asylum. Sarapushkin was apparently granted asylum, but redefected on November 30, 1965.

In the months that followed, Kalitenko received letters from his family and from Sarapushkin, who assured his companion that he was working at his old job in the Soviet Union and had not received any punishment. Based upon these assurances, Kalitenko contacted the Soviet Embassy and requested assistance in returning to the USSR. The Embassy then contacted the Department of State on September 8, 1965, and informed them that Kalitenko wanted repatriation.

Although Kalitenko was in Soviet custody, there is no indication that the Embassy resisted efforts by immigration officials to question Kalitenko in a pre-departure interview on September 16, 1966. The interview was held at INS facilities with the assistance of a State Department interpreter. INS records indicate that Kalitenko's decision appeared to be voluntary.

Further dispositions of the Sarapushkin and Kalitenko cases are unknown.

b) Simas Kudirka

Perhaps the most egregious case of forced repatriation occurred on November 23, 1970, when, by prearrangement, a Soviet fishing trawler, the Sovietskaya Litva, and the USCGC Vigilant moored along side each other off Martha's Vineyard to discuss problems of interest to the New England fishing industry. A member of the Soviet crew, Simas Kudirka, notified the Coast Guard that he would try to defect. Several hours later, the seaman jumped from the Soviet vessel to the Vigilant.

Following a series of radio and telephone conversations with Coast Guard Headquarters and the Department of State Soviet Desk, Soviet crewmen were allowed to board the Vigilant and, using a blanket, rope and ball of material, bound and gagged Kudirka. The seaman was subsequently beaten and removed from the ship, while US officials looked on. [For a detailed discussion of the case, see "Attempted Defection By Lithuanian Seaman Simas Kudirka," Report of the Subcommittee on State Department Organization and Foreign Operations of the Committee on Foreign Affairs, U.S. House of Representatives, 91st Cong., 2d Sess.(1971).]

Although the incident occurred in US waters and the seaman clearly sought asylum, there is no indication that INS was advised or even consulted in the case.

Kudirka was forced to return with his ship to the USSR where he was imprisoned for four years for treason. Due to continued pressures from the West, Kudirka was allowed to emigrate to the United States with his family when he was released from prison in 1974.

c) The Polish Seaman

In September of 1978, a Polish seaman on shore leave contacted the Border Patrol office in New Orleans and indicated that he was unwilling to return to his ship and that he wanted to stay in the United States. Since the seaman spoke only a few words of English, he was taken directly to the INS district office. An interpreter was eventually located through the FBI office.

In a conversation with the interpreter, the seaman indicated that he had been experimenting with mental telepathy for years and wanted to contact American scientists doing research in that field so that he could assist them in their research. He claimed to have spoken telepathically with his wife while the ship was enroute to the United States and she had told him that she and the children were in Bermuda, enroute to the United States. He contended that his wife told him that she and the children would meet him in the United States.

Upon further questioning, it was learned that the seaman was not dissatisfied with his work and was not in fear of returning to Poland. He simply wanted to stay in the United States because he believed that his wife and children were either in the country or enroute. He was also convinced that the American scientists would welcome his help in their research.

At this point, US agents determined that the individual was out of touch with reality and possibly psychologically unbalanced. It was then suggested to the individual that he return to his ship and think things over. If he still wished to remain in the United States, he could contact the Service and discuss the matter further. After some discussion, he agreed to return to the ship. The agents drove him close to the landing nearest to where his ship was anchored, but allowed the man to return unescorted to the ship to avoid any questions about his activities ashore. The individual was not heard from again.

d) Lyudmila Vlasova

In August of 1979, while on tour with a Soviet dance troup, ballet dancer Aleksandr Godunov defected to the United States. He informed US officials that he wanted to see his wife, Lyudmila Vlasova, also a dancer, who was scheduled to leave on a return flight to the Soviet Union a few days later. Since Godunov contended that she also wanted asylum, INS officials issued an order to prevent her departure until she could be interviewed.

By the time the order was served, Vlasova had boarded the plane and was awaiting takeoff. The plane was stopped and the Department of State began negotiations with Soviet officials to allow a departure control interview to be conducted. In the interim, INS developed a contingency plan for the forced removal of Vlasova, if the Soviets refused to allow US authorities to interview the ballerina.

Seventy-three hours later, State Department officials interviewed Vlasova in a mobile lounge vehicle which had been pushed next to the Aeroflot aircraft. Vlasova repeatedly insisted that she wished to go back to the Soviet Union. Finally, the INS lifted the prevent departure order and the plane, with Vlasova, was allowed to leave.

The following year, Vlasova unsuccessfully sought to leave the USSR and join her husband in the United States.

e) Irina Mamedova

On September 25, 1981, Irina Mamedova, the wife of Georgy Mamedova, who served as second secretary at the Soviet Embassy in Washington, DC, took their five-year old daughter Tatyana, and entered an FBI office where she requested asylum. She was immediately placed into protective custody and her request processed expeditiously. A few days later, Georgy Mamedova was escorted to the airport by Soviet security agents and flown to Moscow.

Upon learning of the incident, Soviet Embassy officials alleged that Mrs. Mamedova was being held against her will and insisted upon meeting with her. Mrs. Mamedova initially refused to meet with Embassy officials, then changed her mind.

At a meeting on October 7, 1981, Soviet officials expressed their concern about her marital problems and promised that there would be no reprisals if she returned to the USSR. At the end of the meeting, Mrs. Mamedova agreed to return to the Soviet Union and left with two Soviet officials.

f) Andrey Berezhkov

In August of 1983, Andrey Berezhkov, the 16-year old son of the first secretary of the Soviet Embassy, reportedly wrote letters to President Reagan and the New York Times declaring his intention to seek asylum in the United States and outlining hisplan to defect. On August 10th, Soviet officials, unaware of the letters, reported the boy as missing to the Soviet Desk at the State Department. Later that morning, Berezhkov returned home, voluntarily, without contacting US officials.

As information regarding the letters became available, US officials expressed a desire to question Berezhkov. The case presented unique problems because of the boy's age, his diplomatic status, and the fact that he was in Soviet custody within the Embassy grounds. For instance, the Commissioner of INS issued an order to prevent Berezhkov's departure, but since the boy had diplomatic immunity, the order's validity and enforceability were in doubt.

The State Department engaged in negotiations with the Soviet Embassy which eventually agreed to allow the boy to answer questions from the press. Soviet officials refused to allow INS to conduct a departure control interview.

On August 18, 1983, the Soviet Embassy held a press conference where the boy's father made a short statement to the press, then allowed his son to answer questions directly. Berezhkov repeated his desire to go home with his parents and denied writing the letters.

Several days later, the boy and his family returned to the Soviet Union. While at the airport, before departing, another brief press conference was held and Berezhkov reiterated his desire to go home with his parents. Again, US officials were denied access to the boy.

g) Sergei Kozlov

On April 30, 1984, Sergei Kozlov, a Soviet mathematician and senior exchange student at the California Institute of Technology, complained to U.S. authorities in Pasadena that he was being followed by the KGB and that someone was trying to poison him. Pasadena paramedics subsequently reported that Kozlov appeared to be mentally ill.

Kozlov also called the Soviet Consulate and said someone was trying to kill him. He told his host in the US that he wanted to defect, indicating that he was in trouble with the KGB.

The Soviet Consulate in San Francisco obtained permission from the Department of State to take Kozlov back to the Consulate, indicating that he was "very sick." He was later escorted by Soviet officials on a flight to Washington, DC, where he refused to board a flight bound for Moscow.

After negotiations with Embassy officials, the Department of State was allowed to meet with and interview Kozlov. At the request of the State Department, Kozlov's Soviet doctors also discussed the case with State Department psychiatrists. The Soviet doctors indicated that Kozlov was suffering from an "acute paranoid psychotic break" and indicated that he had been treated with "injections of standard anti-psychotic compounds (Haloperidal, Thorazine, Artane)." He had also been treated with "amenizine and maybe stelezine." The State Department psychiatrist, who never personally examined Kozlov, recommended to other DOS officials that the Soviets be allowed to immediately evacuate Kozlov from the US for medical reasons, based upon the consultation with Soviet doctors.

Kozlov was allowed to depart the US with his Soviet escorts on June 5, 1984.

h) Danut Eugen Vasile

On September 18, 1984, Danut Eugen Vasile, a Romanian seaman, jumped ship at Belle Chasse, LA, and was apprehended by a Plaquemines Parish Sheriff's Deputy as he walked along Louisiana Highway 83. Vasile, who spoke English, told the Deputy that he had left his ship because of problems on board the vessel, but repeatedly asked to be returned to the vessel.

The seaman was turned over to the US Border Patrol for processing. Since they were near the anchorage, the Patrol Agent escorted the seaman back to the ship. INS reports reflect that at no time did the seaman indicate that he was unwilling to return to the vessel.

On September 20, 1984, the Plaquemines Parish Ambulance Service received a call to assist the seaman who had attempted suicide. The ambulance transported Vasile to the Touro Infirmary in New Orleans where the seaman was treated for a minor self-inflicted laceration of the left wrist.

Vasile was released into the custody of the shipping agent. Later in the day, he was returned to the clinic for further examination and was advised to see a psychiatrist, since he appeared to be suffering from alcoholism, which was causing depression. Vasile was then taken to DePaul Hospital, where he was diagnosed as suffering from paranoia and was described as being dangerous. The doctor recommended that Vasile be hospitalized and repatriated as soon as possible. Vasile was then admitted to DePaul Hospital, while the shipping agent made arrangements to repatriate Vasile to Romanian authorities. Vasile was picked up at the hospital and transported to the airport. Vasile refused to board the aircraft until he had his seaman's book, which he claimed was still aboard ship, and as a result of the delay, Vasile missed his flight.

Border Patrol Agents again returned Vasile to the shipping agent so that new travel arrangements could be made for his repatriation. At first, the Master of Vasile's ship did not want to take the seaman back on board, claiming that Vasile had caused considerable problems. Eventually, the Captain relented, and Vasile returned to his vessel.

2. CASE ANALYSES

While CSCE investigators identified no specific criminal violations by US authorities, the cases discussed above bear some similarities to aspects of the Medvid case. Many of the issues raised in the Medvid case were neither unique nor unforeseeable, specifically: the role of the Department of State in "immediate action" cases; Soviet presence at interviews; Soviet assurances of non-retaliation; the development of contingency plans for the forced removal of individuals from Soviet custody; and the mental state of the individual.

The following discussion addresses issues arising both prior to the formal processing of asylum requests (asylum applicant or potential asylum applicant cases), and also to departure control procedures, but does not extend to the issue of final adjudications of asylum requests.

a) The Role of the Department of State in Repatriation Cases

During the Commission's investigation of the Medvid case, officials from both the Department of State and the INS were queried as to the roles each play in asylum applicant cases. INS personnel were careful to point out that until it has been established that an alien is unwilling to return to his country and is clearly requesting asylum, the INS role is limited. INS officials maintain that in cases where the foreign embassy has become involved, it is proper for the Department of State to assume a leadership role, even in the departure control interviews. According to these officials, once the individual states that he/she is unwilling to leave the United States voluntarily and indicates a desire to seek asylum, the case is turned over to INS for processing.

This distinction ignores legislative and regulatory provisions which assign specific responsibility in asylum matters to the Attorney General and the Commissioner of Immigration.

For at least twenty years, as evidenced by the Kalitenko/Sarapushkin cases, the Department of State has interjected itself in asylum applicant and potential asylum applicant cases involving Soviet and Soviet-bloc nationals. The Department has consistently gone beyond the boundaries of negotiation and has exercised operational control in many of these incidents. However, instead of citing the President's authority under the Constitution to act in matters of foreign policy, the legal basis for intervention has consistently been cited as INS legislative and regulatory authority.

The Department of State cannot rely upon the legislative and regulatory authority of another agency to support actions taken by that Department. Only INS can act upon INS authority. Such deviations from Congressionally and constitutionally mandated procedures have been held by the US Supreme Court to be both improper and unconstitutional.

Since the Kudirka incident in 1970, the State Department has taken a more formal stance in its role in immediate action cases. As a direct result of that incident, President Richard Nixon issued a directive designating the Department of State responsible for coordinating with all agencies of the US Government concerned in any way with the asylum process to ensure that all understand the "depth and urgency of our commitment."

In January of 1971, summary interim procedures for handling requests for political asylum by foreign nationals were prepared by the Department of State for use by those agencies which did not then have procedures. [EXHIBIT #63]

The following year, the State Department published Public Notice 351 in the Federal Register outlining the policy and procedures to be followed in asylum cases. [EXHIBIT #64] Public Notice 728 was published on October 24, 1980, following passage of the 1980 Refugee Act, supplementing and modifying the former Public Notice with regard to notification to the US Department of State. [EXHIBIT #65]

While the State Department guidelines succeeded in closing the gap in procedures for handling of asylum seekers, their implication, even their very existence raises questions as to the Department's proper role in asylum matters. Since responsibility in asylum matters is legislatively delegated to the Attorney General and the Commissioner of INS, the decision to task the Department of State with the responsibility for setting guidelines in an area where it's authority is limited is highly questionable.

Upon review of the referenced State Department guidelines, it is clear that the Department has elevated itself to a primary role in asylum cases, despite the fact that this authority has been designated elsewhere. For instance, the guidelines state that "upon receipt of a request for asylum from a foreign national . . . US Government agencies should *immediately notify* the Department Operations Officer at the Operations Center of *the Department of State* . . . The Department Operations Officer will refer any request to the appropriate offices in the Department of State and will maintain contact with the US agency involved until the designated action officer in the Department of State assumes charge of the case." [Emphasis added.] Several paragraphs later, after extension procedures are outlined for agencies to follow in the reporting of cases to the State Department, the guidelines note that INS is also to be "immediately" informed of asylum requests and arrangements are to be made to transfer the case as soon as feasible.

b) Notification to Soviet officials and Soviet Presence at Interviews

The Consular Convention and Protocol between the US/USSR was signed at Moscow on June 1, 1964, and entered into force on July 13, 1968. Article 12.2 of the Consular Convention provides that "appropriate authorities of the receiving state shall immediately inform a consular officer of the sending state about the arrest, or detention in other form, of a national of the sending state."

Article 13.3 of the Consular Convention provides:

> In the event that . . . competent authorities of the receiving state intend to take any coercive action on vessels sailing under the flag of the sending state while they are located in the waters of the receiving state, the competent authorities of the receiving state shall . . . inform a consular officer of the sending state prior to initiating such action so that the consular officer may be present when the action is taken . . .

Article 13.4 notes that the above paragraph does not apply "to customs, passport, and sanitary inspections, or to action taken at the request or with the approval of the master of the vessel."

As a matter of routine, INS does not notify the embassies of asylum requests. According to INS, aliens seeking asylum, if not otherwise in a "legal" status, are placed in "protective custody" and are not arrested or otherwise detained. Despite the 1964 agreement, there is no obligation on the part of the US government to report Soviet nationals who are in an illegal status in the United States if they have applied for asylum.

A description of INS policy, on the handling of requests for production of information concerning asylum applications, was found in a Memorandum dated August 2, 1976, from the Acting Regional Commissioner, INS, Dallas, Texas, to All INS District Directors, Officers in Charge and Chief Patrol Agents, Southern Region, which notes that requests for political asylum are to be handled in the normal procedures under 8 CFR Section 108; OI 108; 8 CFR Section 253 and OI 253, with one exception: "the alien's government officials, e.g., Embassy or Consular officials or officials from the vessel, will not be permitted to talk to the alien until all processing is completed and then only if the Department of State has so authorized." [Emphasis added.]

Further clarification of INS policy is found in a February 5, 1982, Memorandum from James H. Walker, Acting Associate Commissioner, Management, to Regional Commissioners, Associate Commissioners, Assistant Commissioners and Heads of Offices, which states that all asylum applications are to be treated as confidential and no disclosures of any asylum application are to be made without the consent of the asylum applicant.

As a practical matter, once the embassy suspects that the person is in US custody, a request is usually made to talk to the individual. In interviews with Department of State officials, concern was noted that retaliatory actions could be taken against US citizens in the USSR and Soviet-bloc countries, if US officials refused to allow Soviet officials to talk with their citizens in US custody. However, the ultimate decision is made by the asylee or applicant.

For instance, Soviet officials insisted for days that they be allowed to meet with Irina Mamedova. At the time, she and her daughter were in a safe area and had been granted asylum. Yet, she agreed to meet with the officials and ultimately chose to return to the USSR.

c) Soviet Assurances of Non-retaliation

Despite concerns that Medvid was threatened with harm to his family, several cases reviewed by CSCE staff indicate that it is just as likely that Soviet assurances of non-retaliation may have prompted his decision to return to the USSR.

Irina Mamedova was calmly assured that no action would be taken against her and was reassured that officials were aware of her marital problems which had obviously upset her. The tactic was extremely effective. Mrs. Mamedova, who had already received asylum and had been placed in a secure area with her daughter, agreed to return to the Soviet Union.

Kalitenko was similarly convinced that he would be able to return to his home and former job with no repercussions. Unfortunately, no information is available to confirm Soviet claims of non-retaliation.

d) Contingency Plans

In the Vlasova case, as in the Medvid case, a contingency plan was developed for the forced removal of the individual in the event US/USSR negotiations failed. Unlike the Medvid case, however, the contingency plan in the Vlasova case called for the use of the FBI tactical team. By comparison, the Medvid contingency plan was to be implemented by local Border Patrol and INS agents, assisted by only four Border Patrol tactical team members.

Staff review of the Medvid case found no INS guidelines for the development or implementation of contingency plans in possible defector cases.

e) Psychiatric Aspects

In reviewing the INS case files, the Commission staff identified several cases where the mental stability of the alien came into question, specifically, the incident of the Polish Seaman, the Kozlov case, and the Vasile case. Due to the medical and pschiatric issues raised by the Medvid case, mention of these cases is appropriate to point out that medical and psychiatric issues have been found in other cases.

Yet, a review of INS procedures reveals no special guidance to agents in the field on the handling of such individuals, particularly if these individuals are also requesting asylum. In the case of the Polish seaman, the individual was simply persuaded to return to his ship. In the Kozlov case, the statements by Soviet psychiatrists were taken at face value. While Kozlov's bizarre behavior was noted firsthand by several Department of State representatives, State Department files do not indicate that Kozlov was ever examined by US doctors or tha the was observed for any period of time to determine the basis for his behavior.

B. Deserting Crewmen and Apprehensions

During the ordeal of the Medvid incident, numerous assertions about the number of deserting crewmen in the New Orleans area arose, specifically, the number of shipjumpers from Soviet-bloc countries. As part of the CSCE review of other related cases, staff examined the INS Forms I-409, Reports of Deserting Crewmen, for a three year period covering February 1984 - January 1987.

During the 36 month period, there were 449 reported deserting crewmen. Of these, only *seven* were from the Soviet Union/Soviet-bloc nations - five from Yugoslavia and two from Romania. The whereabouts of these seamen is unknown, with one exception.

CSCE staff also reviewed Apprehension Reports on crewmen for the period October 1984 through January 1987. During the 28 month period, there were 186 crewmen and stowaways apprehended in the New Orleans area. Of these, five were from the Soviet Union/Soviet-bloc countries - one from Yugoslavia, one from the Soviet Union (Medvid), and three from Poland. The crewmen from Yugoslavia and Poland each applied for and received asylum.

Asylum applications for the New Orleans area were also reviewed in an effort to ascertain if a correlation exists between deserting crewmen and asylum applicants, and overall numbers of Soviet and Soviet-bloc asylum applicants. From September 1985 through January 1987, there were 285 requests for asylum. Only *seven* of the applicants were from Soviet/Soviet-bloc nations and all of these were from Poland.

CONCLUSIONS

Based upon a detailed review of the facts in the Medvid case and the applicable statutory and case law, the Commissionstaff finds the following:

I. White House, National Security Council, Department of State, and Department of Justice officials deviated from constitutionally and congressionally mandated procedures. This failure to follow prescribed procedures constitutes a violation of law.

Congress has primary power over immigration matters and has assigned the main responsibility for immigration, and specifically asylum matters, to the Attorney General and other Department of Justice officials pursuant to the Immigration and Nationality Act of 1952, as amended, 8 USC Sections 1103(a) and 1158. US Supreme Court decisions affirm that the comprehensive character of the INA vastly restricts the role of the executive in immigration matters. While the president may exercise his plenary authority over foreign relations and delegate the Department of State to assume control, he must clearly identify this as the authority. However, in the Medvid case, DOS repeatedly cited 8 CFR Sections 215.2 and 215.3 as the legal basis for detaining and questioning Medvid. These regulations, promulgated pursuant to the INA, directs that INS, *not* DOS, has primary responsibiltiy in asylum matters.

The Department of State had no statutory or regulatory basis for intruding operationally into the Medvid case. Their role should have been limited to conducting negotiations with the Soviet Embassy and advising the INS. At the same time, INS relinquished its jurisdictional responsibility under the INA to the Department of State in direct conflict with the intent of Congress.

While the outcome of the case might not have been altered, such deviations from specifically mandated procedures violate the provisions of the INA. Furthermore, the lines of responsibility were unnecessarily confused, resulting in unacceptable delays in planning, organization and execution.

II. The White House, DOS, DOJ and other executive agency officials reviewed the subpoena issued by the Senate Agriculture Committee and determined that the executive branch would make no effort to "enforce" the subpoena. Current law does not require the executive branch to enforce congressional subpoena, as statutory provisions exist for this purpose. However, INA regulations *do require* an INS departure control agent "who knows or has reason to believe" that an alien is "needed . . . in connection with any investigation or proceeding being, or soon to be conducted by any . . . body in the United States" . . . "shall temporarily prevent the departure of such alien from the United States." 8 CFR Sections 215.2(a) and 215.3(h). INS, at the direction of executive branch officials, ignored their own regulations, violating current law.

III. Procedures established for the implementation of the Immigration and Nationality Act of 1952, as amended, and specifically the handling of asylum applicants, were not followed during the initial stages of the Medvid case. These infractions, while serious inconsequence, were the result of carelessness and poor judgment rather than willfulness.

There is no evidence to support allegations that the decision to return Medvid to the M/V Marshal Konev on the evening ofOctober 24, 1985 was made by anyone other than Border Patrol Agent Ernest Spurlock.

Current INS/Border Patrol procedures are adequate for disciplining Border Patrol officers who fail to follow proper procedures.

IV. Allegations of a secret grain agreement to return deserting Soviet crewmen and of State Department intervention directing thereturn of the seaman to his ship are unsupported.

V. There is no evidence to support allegations of collusion and conspiracy between US and USSR officials to repatriate Medvid.

VI. Concerns about the potentially negative influence of the approaching Summit Conference in Geneva upon Medvid's processing and repatriation were unfounded. In fact, the pressures generated by this event may have had a positive influence on US efforts to resolve the matter.

VII. There was no Medvid imposter. Fingerprint analysis proves that the person fingerprinted by the US Border Patrol on the night of October 24, 1985, was the same person who signed statements on October 29, 1985, specifying his desire to return to the Soviet Union.

VIII. Medvid *was* administered drugs aboard the M/V Marshal Konev after his initial repatriation on October 25, 1985. Even though US medical authorities utilized reasonable techniques in attempting to determine Medvid's ability to make an asylum determination, body fluid tests *should* have been taken for a more technically accurate diagnosis of residual drug effects.

IX. INS/Border Patrol discovered sufficient evidence to justify removing Medvid for additional questioning after his initial repatriation, pursuant to 8 CFR Sections 215.3(j) and 253.1(f). Initial steps taken to resolve the matter by removing Medvid from the ship were appropriate. However, once it wasdetermined that Medvid was unconscious and not in a state to be readily removed from his ship, INS/Border Patrol deferred to situation al aspects prohibiting his immediate transfer into US custody. As a result, the opportunity was lost and Medvid was allowed to remain on board the ship far too long.

The necessity for immediate action cannot be overemphasized. Nothing will compensate for this failure. The success of the asylum program, as intended by Congress, hinges on quick, decisive action by US officials.

RECOMMENDATIONS

Based upon its findings, the Commission makes the following recommendations:

I. The INS position as the lead agency responsible for asylum matters must be reemphasized by the Administration and allowed to operate accordingly. Other departments and agencies must be reminded that they are to provide support to INS in cases of this nature.

II. INS should evaluate current procedures for the handling of cases where aliens are detained for a determination about voluntary departure from the US and develop procedures for coordinating these efforts with other interested departments and agencies. Every effort must be made to provide the individual with a secure and non-threatening environment in which to make his or her decision.

III. If the above recommendations are not endorsed, Congress should revise current law to clarify the role of the Department of State in instances of this type.

IV. Crewman Control provisions of the Immigration and Nationality Act should be reviewed to assess whether or not deportable crewmen should be accorded the same due process as other aliens in deportation status.

V. Congress should consider appropriate legislation to incorporate the suggested standards for psychiatric evaluations of aliens whose departures from the US may not be voluntary, discussed in Appendix B of this report, or recommend to INS the adoption of such guidelines by regulation or operational procedures.

EXHIBITS

Document Number	Text	Page
1. Map of Mississippi River	2	118
2. INS Form I-418, Crew List	3	119 & 120
3. INS Form I-259, Notice to Detain, Deport, Remove or Present Aliens, dated 10/24/85	3	121
4. Crewman Control Worksheet, dated 10/24/85	4	122
5. CSCE Photo -- J&L Jewelry Store	4	123
6. CSCE Photo -- Belle Chasse Shopping Center	4	124
7. Photograph of Brown Jar Carried by Medvid	5	125
8. Handwritten Note	6	126
9. CSCE Photo -- NODP First District Station	7	127
10. Harbor Police Tape Recordings***	7	***
11. NODP Incident Report, dated 11/08/85	9	128
12. CSCE Photo -- Harbor Police Headquarters	10	129
13. Border Patrol Radio Log**	10	**
14. Incident Report, Harbor Police, dated 10/28/85	11	130–133
15. CSCE Photo -- Border Patrol Station	14	134
16. INS Form I-213, Record of Deportable Alien	18	135
17. Border Patrol Identification Photograph of Miroslav Medvid	19	136
18. Medvid Fingerprint Card	19	137
19. INS Form I-259, dated 10/25/85	19	138
20. CSCE Photo -- Port Ship Service Office	20	139
21. CSCE Photo -- Port Ship Service Launch	21	140
22. CSCE Photo -- Aerial photo of river bank (Port Ship Service Launch Site)	21	141
23. Border Patrol Sector Office Log**	24	**
24. O'Connor Log**	27	**
25. INS Form I-281, Notice to Prevent Departure, dated 10/25/85	30	142
26. INS District Office Log**	30	**
27. Brandemuehl Log**	30	**
28. Vannett Statement, dated 10/26/85	38	143

Document Number —Continued	Text	Page
29. Caruthers Statement, dated 10/26/85	38	144
30. Department of State Log**	38	**
31. DOS Talking Points – Medvid Case	39	145 & 146
32. Agreed Operation Plan (INS/DOS)**	40	**
33. INS Special Interest Investigation***	43	***
34. USBP Photo – M/V Marshal Konev	43	147
35. USBP Photo – USSR Officials Disembark Konev	43	148
36. USBP Photo – M/V Marshal Konev	43	149
37. USBP Photo – M/V Marshal Konev	43	150
38. USBP Photo – M/V Marshal Konev	43	151
39. USBP Photo – M/V Marshal Konev	43	152
40. INS Interview Tape and Transcript**	46	**
41. INS Central Office Log**	50	**
42. INS Form I-281, dated 10/28/85	50	153
43. CSCE Photo – Naval Air Station BOQ	51	154
44. Ross Lavroff's Affidavit	54	155–159
45. Medvid's Statements of Intentions (English and Russian Translations)	56	160
46. Hunt Affidavit, dated 03/03/87	56	161
47. Senator Helms' Memorandum drafted by James Lucier	57	162
48. Department of State Memoranda	58	163–166
49. Stephen's Letter re: Executive Privilege, dated 04/06/87	59	167
50. Presidential Directive/NSC-27	59	168–170
51. Beckler Letter re: Poindexter, dated 04/01/87	59	171
52. CSCE Photo – Cargill Grain Elevator	60	172
53. Times-Picayune News Photograph	70	173
54. Geltz Photograph	71	174
55. Times-Picayune News Photograph	72	175

Document Number—Continued	Text	Page
56. Douglas Statement, dated 01/24/87	76	176 & 177
57. Spurlock Lie Detector Test Results	76	178 & 179
58. Wyman Deposition	77	180–334
59. Morphological Facial Skeleton Comparison	77	335–342
60. Eckert Letter	78	343–349
61. Letter to Dubinin, dated 12/07/86	78	350
62. FBI Fingerprint Chart Laboratory Results	79	351 & 352
63. DOS General Policy Statement, dated 01/04/72	109	353–360
64. Public Notice 351	109	361 & 362
65. Public Notice 728	109	363

** Sealed exhibit
*** Bulky exhibit

BLUE WATER SHIPPING COMPANY
MISSISSIPPI RIVER
GENERAL AGENTS
BULK SPECIALISTS
BLUE WATER
BLUE WATER
BLUE WATER
BLUE WATER
BLUE WATER
SERVING ENTIRE U.S. GULF

~~TREASURY DEPARTMENT~~
~~UNITED STATES CUSTOMS SERVICE~~
UNITED STATES DEPARTMENT OF JUS
Immigration and Naturalization Service

F1415
1515
B1710
C1739

~~PASSENGER LIST~~
CREW LIST

(Cross out one)

(Oath to be taken on Customs Form 1300)

Form Approved
OMB No. 43-

Sheet No. 1 of 2

Class (First, Cabin, Tourist, or Other)

CARRIER (Nationality, name, and official number of carrier) USSR,MARSHAL KONEV, M-32700.

Date of arrival/~~departure~~ (Cross out one) 10/24/85

Port of arrival/~~departure~~ (Cross out one) NEW ORLEANS, LA

Last foreign port before arrival in United States (Place and Country) PIRAEUS, GREECE

(Date departed) 10/2/85

If departing, show first port at and date on which carrier arrived in United States on this trip

If departing, show first foreign port after departure from United States

(1) NAME IN FULL (List Alphabetically) Family name	Given name and middle initial	(2) Date of Birth Nationality and passport number	(3) CREW Position	Where shipped or engaged	(4) Crew (departing U.S. Flag vessels only) USCG Z or C.D.B. number and name and address of next of kin	(5) This column for use of government officials only (except when carrying certain passengers - Instructions)
KACHENKO T-225	RIONGES	10.01.32. 382476	MASTER	USSR	KHERSON,USSR	Parole
ALYY M-400	YURY	18.10.40. 295364	CH.MATE	USSR	MOSKOW,USSR	Parole
EDVEDEV M-313	BORIS	03.02.32. 234058	1-MATE	USSR	ARKHANGELSK,USSR	Parole
YTSYUK	ANATOLY	21.08.53. 416184	2-MATE	USSR	VINNITSA REG,USSR ✓	Refused
HIYANOV	NIKOLAY	03.02.57. 234191	2-MATE	USSR	ROSTOV REG,USSR ✓	Refused
ARTAMONOV	VLADIMIR	03.03.54. 370026	3-mATE	USSR	TUAPSE,USSR ✓	Refused
ORODAVKA	ALEKSANDR	21.06.56. 248640	5-MATE	USSR	KIEV,USSR ✓	Refused
RJUCHKOV	VIKTOR	03.08.50. 248250	CH.RADIO	USSR	IVANOVO,USSR ✓	Refused
ILGUNAS	VIKTOR	18.07.52. 417400	R/OPER	USSR	KLAYPEDA,USSR ✓	Refused
OSIPCHUK	SERGEY	25.11.56. 294394	DOCTOR	USSR	DAGESTAN,USSR ✓	Refused
OLODENKO K-455	ALEKSANDR	02.08.46. 325236	CH.ENG.	USSR	DONETSK REG,USSR	Parole
YAKOVENKO	ANATOLY	19.03.50. 371139	2-ENG.	USSR	ADJIAR,USSR ✓	Refused
AMOULOV	ANATOLY	22.11.53. 238698	2-ENG.	USSR	DONETSK REG,USSR ✓	Refused
KOROTIN	VIKTOR	10.03.58. 372639	3-ENG	USSR	KRASNODAR REG,USSR ✓	Refused
KOSTRYUKOV	GEORGY	27.04.60. 323572	4-ENG	USSR	NOVOROSSIYSK,USSR ✓	Refused
ROZHOK	MIKHAIL	13.05.35. 370385	EL.ENG.	USSR	VINNITSA REG,USSR ✓	Refused
KOVALCHUK	IGOR	08.11.58. 248432	EL.ENG.	USSR	DNEPROPETROVSK REG USSR ✓	Refused
ETTER	YURY	10.01.40. 248912	BOATSW.	USSR	ODESSA,USSR ✓	Refused
ARDIROSYAN	ARTEM	21.01.48. 324277	SAILOR	USSR	NOVOROSSIYSK,USSR ✓	Refused
SKRIPNIKOV	YURY	10.12.62 293627	SAILOR	USSR	KRASNODAR REG,USSR ✓	Refused
LYALYUSHKIN	ALEKSANDR	12.05.64. 371872	SAILOR	USSR	ARKHANGELSK REG, USSR ✓	Refused
GRINENKO	YURY	25.04.62. 416744	SAILOR	USSR	GROZNY,USSR ✓	Refused
HERNYSHOV	OLEG	12.10.61. 246466	SAILOR	USSR	KRASNODAR REG,USSR ✓	Refused

23/43 Total Number

I-418 (Rev. 2-1-74)N   C & M SPECIALTIES INC. (904) 884-7067

Agent Universal

…URY DEPARTMENT
…STATES CUSTOMS SERVICE

…STATES DEPARTMENT OF JUSTICE
…igration and Naturalization Service

~~PASSENGER LIST~~
CREW LIST
(Cross out one)

(Oath to be taken on Customs Form 1300)

Form Approved
OMB No. 43-…

Sheet No. 20/2

Class (First, Cabin, Tourist, or Other)

CARRIER (Nationality, name, and official number of carrier)

Date of arrival/~~departure~~ (Cross out one) 10/24/85

Port of arrival/~~departure~~ (Cross out one) NEW ORLEANS, LA

Last foreign port before arrival in United States (Place and Country) PIRAEUS, GREECE

(Date departed) 10/2/85

If departing, show first port at and date on which carrier arrived in United States on this trip

If departing, show first foreign port after departure from United States

(1) NAME IN FULL (List Alphabetically)		(2) Date of Birth Nationality and passport number	(3) CREW		(4) Crew (departing U.S. Flag vessels only) USCG Z or C.D.B. number and name and address of next of kin	(5) This column for use … ernment officials … (except when carr… certain passengers. … Instructions)
Family name	Given name and middle initial		Position	Where shipped or engaged		
.KARTOSHKIN	IVAN	09.10.57. 372311	SAILOR	USSR	KALUGA REG,USSR ✓	Refuse
.KLEZOVICH	ANATOLY	03.05.56. 234453	SAILOR	USSR	KAZAKH SSR,USSR ✓	Refuse
.ZHERNOVOY	ALEKSEY	14.08.58. 238602	SAILOR	USSR	KRASNODAR REG,USSR ✓	Refuse
.ZHIDLEV	SERGEY	28.01.61. 417438	SAILOR	USSR	SUMY REG,USSR ✓	Refuse
.POLZOV	BORIS	30.05.57. 238172	SAILOR	USSR	KRASNODAR,USSR ✓	Refus
.SANAEV	ALEKSANDR	26.11.59. 293618	CH.COOK	USSR	KRASNODAR REG,USSR ✓	Refuse
.TERZIYAN	ARAM	23.07.63. 417435	2 COOK	USSR	KRASNODAR REG,USSR ✓	Refuse
.SHEPEL	SVETLANA	10.12.64. 323190	STEWARD	USSR	KRASNODAR,USSR ✓	Refused
.POGRIBNYY	IVAN	04.01.34. 325223	DONKEYM.	USSR	KIROVOGRAD REG,USSR ✓	Refus
YATSENKO	NIKOLAY	01.09.46. 369722	DONKEYM.	USSR	ODESSA reG,USSR ✓	Refuse
.PETROVSKIY	ALEKSANDR	23.10.40. 370293	TURNER	USSR	NOKOLAEV REG,USSR ✓	Refuse
.MARKOV	ALEKSANDR	16.12.58. 294621	MOTORM.	USSR	NOVOROSSIYSK,USSR ✓	Refus
.MAKAROV	NIKOLAY	16.12.61. 294424	MOTORM.	USSR	KHARKOV,USSR ✓	Refuse
.PODGUZOV	VLADIMIR	23.10.64. 270661	MOTORM.	USSR	SVERDLOVSK-REG,USSR ✓	Refus
.BULATOV A	ANATOLY	23.08.52. 270851	MOTORM.	USSR	DONETSK REG,USSR ✓	Refus
.STOLYAR	ALEKSANDR	07.07.33. 369754	MOTORM.	USSR	NIKOLAEV,USSR ✓	Refuse
.KOZYREV	YURY	03.09.63. 324228	MOTORM.	USSR	KRAMATORSK,USSR ✓	Refuse
.DEVIN	MIKHAIL	17.11.51. 375841	MOTORM.	USSR	ROSTOV REG,USSR ✓	Refus
.MEDVID	MIROSLAV	24.03.60. 417864	ELECTR.	USSR	LVOV REG,USSR ✓	Refuse
.GRIGOREV	GENNADY	22.09.35. 293494	ELECTR.	USSR	NOVOROSSIYSK,USSR ✓	Refuse
	captain states no passengers				OCT 24 1985 22	
	no stowaways				Jeffy W	

20/43 Total Number
I-418 (Rev. 2-1-74)N C & M SPECIALTIES INC (504) 984-7887

Agent Jersel

NOTICE TO DETAIN, DEPORT, REMOVE OR PRESENT ALIENS

PORT OF NOL DATE 10-24-85

To the Owner, Agent, Consignee, Charterer, Master, Commanding Officer, or Officer in Charge of the

M/V MARSHALL KONEV
(Name of vessel or aircraft identification)

RUSSIAN Line.

Pursuant to the provisions of the Immigration and Nationality Act, and the Regulations issued by the Attorney General thereunder, you are directed to—

☑ Detain on board. ALL CREW except Below personnel To do ships business. 4 persons

☐ Deport from the United States.

☐ Remove to ______* on ______, 19__, at ______M.

☐ Present to ______ on ______

for the following reason (s) COMMUNIST Bloc country with NO VISA or IBEX

the alien(s) named below:

NAME	STATUS ON VESSEL OR AIRCRAFT (1st, 2d, 3d, or tourist class passenger; member of the crew; stowaway etc.)
1. TKAchenko, Rionees	MASTER
2. MALYY, YURY	Chief mate
3. MEDVEDEV, BORIS	1ST MATE
4. KOLODENKO, ALEKSANDR	Ch ENGR

(Immigration Officer)

Receipt of the above notice is hereby acknowledged:

(Signature & Title of person signing receipt) 10/24 1985 at 1805 HRS
(Date) (Time)

(Signature & Title of person signing receipt) 10/24 1985 at 18.05 HRS
(Date) (Time)

(Signature & Title of person signing receipt) ______ 19__, at ______M.
(Date) (Time)

*When removal to the immigration station is directed, the aliens must be detained on board the ship on which they arrived pending delivery to the immigration station. Such transfer must be made by the most direct and expeditious route with the least possible contact with public, and at the expense and responsibility of the steamship company. Aliens who have been held for further medical examination in belief that they are suffering from communicable diseases must be completely isolated from other passengers and from the public.

FORM I-259 (REV. 10-1-63)

☆ U.S. Government Printing Office 1975—772-821/458

CREWMAN CONTROL WORKSHEET

REGISTRY USSR SHIP M/V MARSHALL KONEV

FROM ______ NOTIFIED BY GOODPASTER DATE/TIME 0804 10-25-85

DOCK PSS B-C ETD 11-9-85 FOREIGN

STEAMSHIP AGENCY UNIVERSAL 464-0044 AGENT HOME PHONE ______

DETAINEE	NATIONALITY	CHARGE
ENTIRE CREW EXCEPT:	USSR	NO VISA
TKACHENKO, RIONGES (MASTER)		
MALYY, YURY (CHIEF MATE)		
MEDVEDEV, BORIS (FIRST MATE)		
KOLODENKO, ALEKSANDR (CHIEF ENGINEER)		

REMARKS: (CHANGE IN SHIP LOCATION, DATES DOCS CHECKED, ETC.)

DATE/TIME SAILED ______ NEXT PORT ______ NOTICE SENT ______

VERIFIED BY ______

RECEIVED FROM COMMUNICATIONS EQUIP. OPR. LIKENS

Cole

Shipping Agent departed his office 3:25P

Supv. Inv. Freeson.

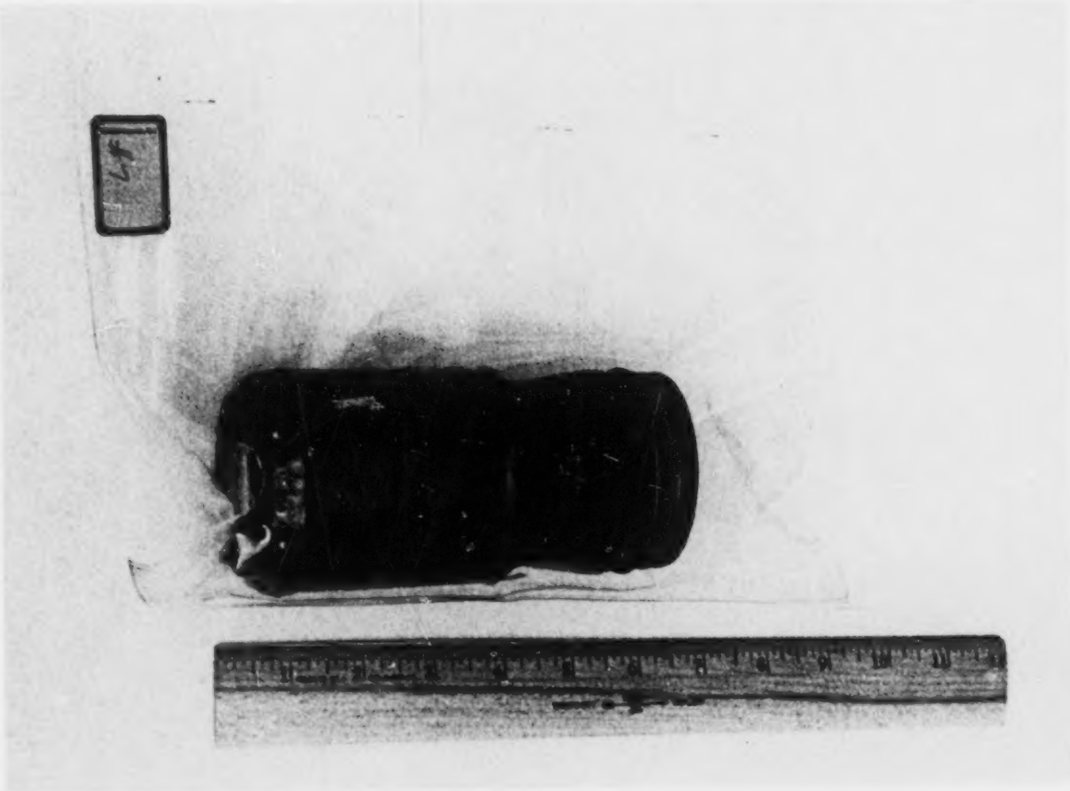
NY, HOME PHONE 201-791-1238

J & L JEWELRY STORE

PHOTO BY CSCE STAFF

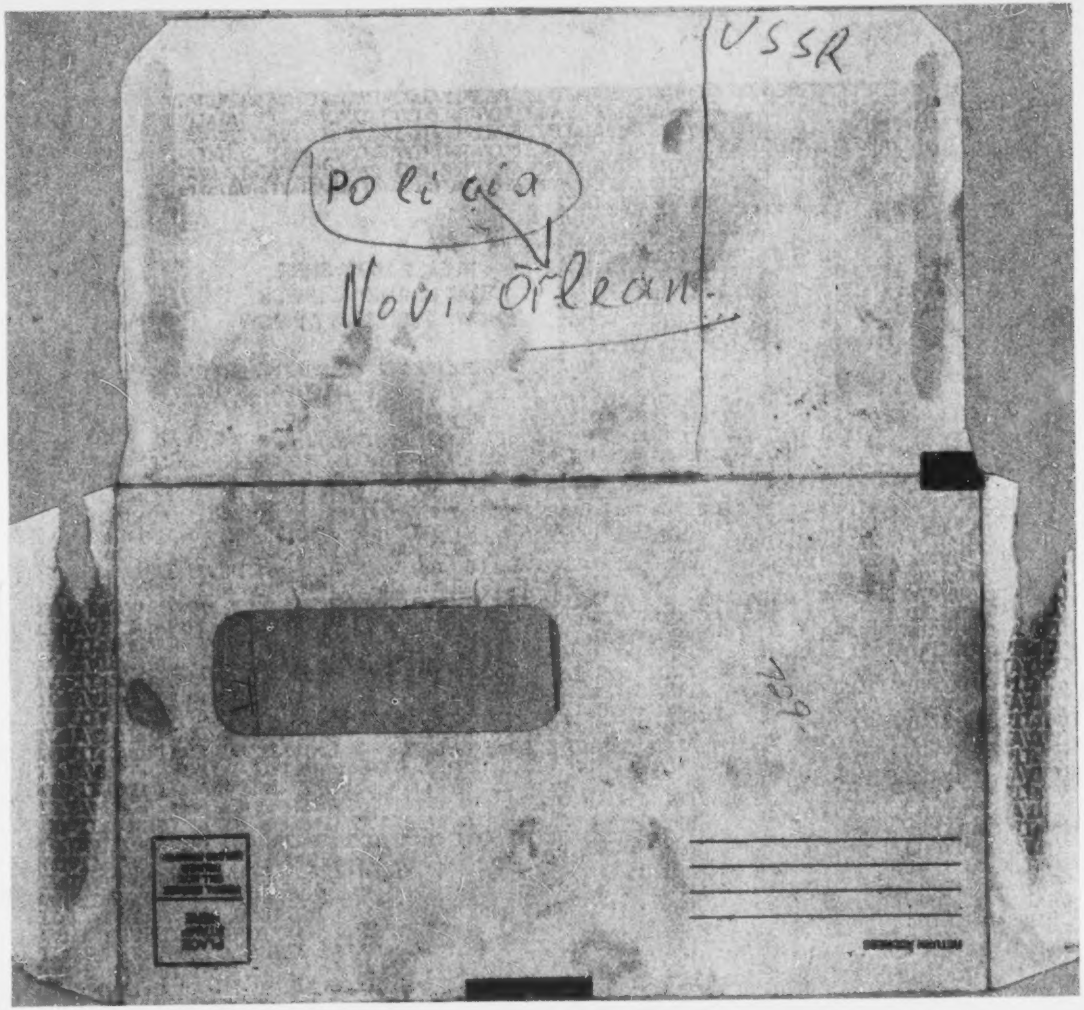
BELLE CHASSE SHOPPING CENTER

PHOTO BY CSCE STAFF



JAR CARRIED BY MEDVID

CSCE PHOTO

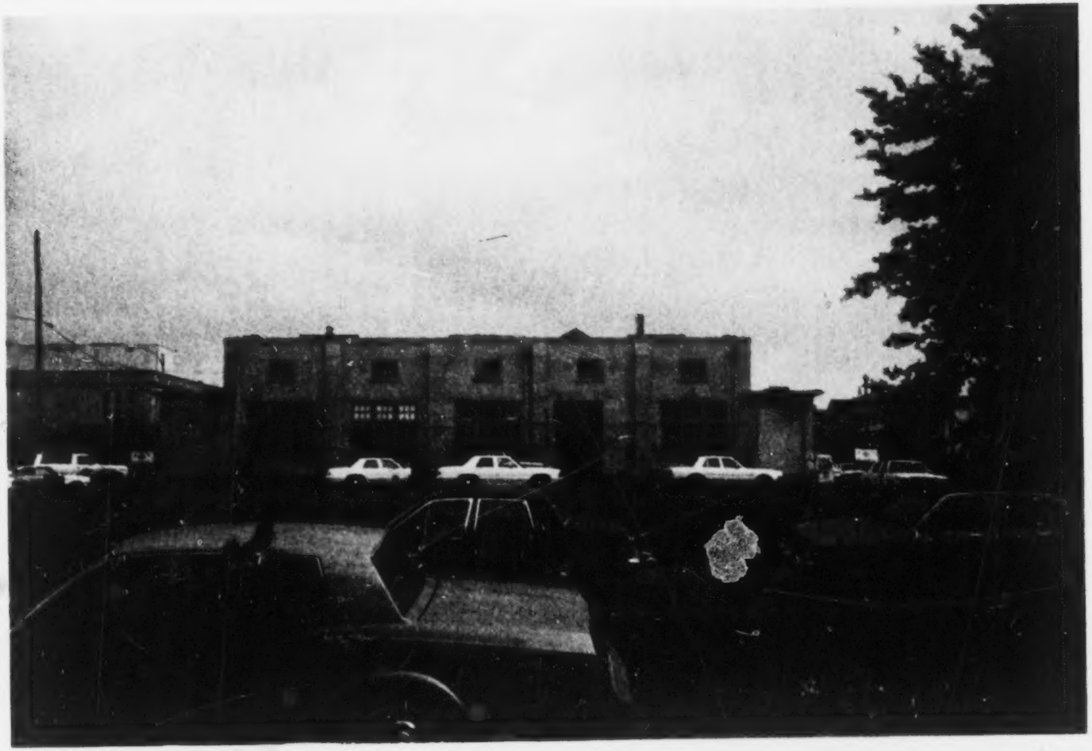


USSR

Policia

Novi Orlean.

729-



NOPD FIRST DISTRICT STATION PHOTO BY CSCE STAFF

1st File

DEPARTMENT OF POLICE
INTEROFFICE CORRESPONDENCE

TO: Deputy Chief Calvin Galliano DATE 11-8-85

FROM: Lt. Max Gagnard

SUBJECT: Incident with Foreign Seaman

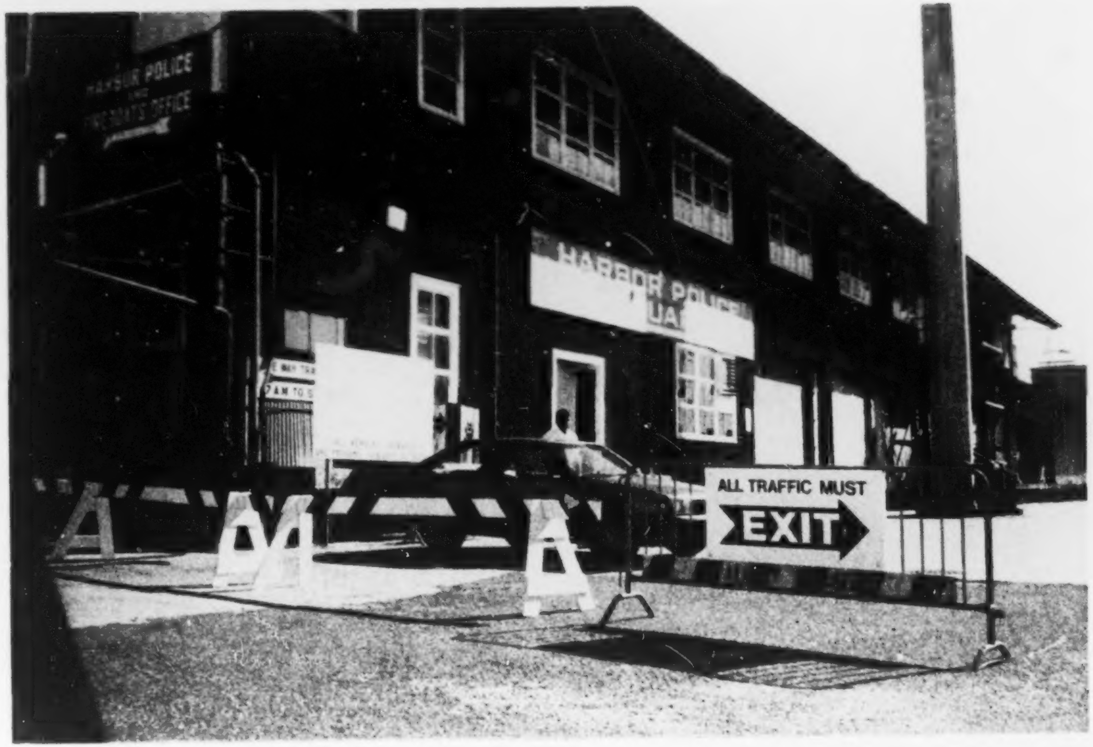
Sir,

About 9PM, 10-24-85 PO B. Jacobson and CO J. Lainez were in the First District Station when a foreigner came in and began speaking to them in an unknown language. Officer Jacobson asked the individual if he was from a ship and he replied "Yea, ship, ship." After attempting to communicate with him for 15 to 20 minutes and finding out that he knew no English and they knew nothing of the language he was speaking in, Officer Lainez called the Harbor Police and informed them of the presence of this individual at the First District.

In addition to this the individual had one piece of paper on him written in a foreign language and he would not give it to the Officers. The Harbor police were advised of this via telephone. The officers decided at this time to transport the subject to the Harbor Police and this was done by CO Macklin.

Respectfully submitted,

Lt. Max Gagnard


HARBOR POLICE
AND
FIREBOATS' OFFICE
HARBOR POLICE
UA
ALL TRAFFIC MUST
EXIT

HARBOR POLICE HEADQUARTERS PHOTO BY CSCE STAFF

BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS
(A Unit of Local Government of the State of Louisiana)
INTER-OFFICE COMMUNICATION

TO: A.T. Ben, Superintendent
Harbor Police Department

DATE: October 28, 1985

FROM: T. Turner, Sergeant

C.C. Messrs:Reed,Joffray,Eckert,
Keating,Guidry,Orlesh,
Spalluto,Drennan,
Olivier,Henrichs

SUBJECT: LOST SEAMAN

On Thursday, October 24, 1985, at approximately 2140 hours, Cpl. W. George, working as Acting Desk Sergeant at Harbor Police Headquarters, received a called from the New Orleans Police Department (8th District Station), stating that they had a lost Seaman. Cpl. George advised them to check the Seaman Shore Leave Papers, but the Seaman refused to show his papers and left the station. At approximately 2155 hours, New Orleans Police called again, and stated that the Seaman had returned, showed his papers, but they could not read the papers or understand what the Seaman were saying due to the foreign language. Cpl. George advised New Orleans Police to transport the Seaman to Harbor Police Headquarters, at which time he would notify Immigration of the situation, and request that they send a agent to Harbor Police Headquarters.

At approximately 2208 hours, New Orleans Police arrived at Harbor Police Headquarters with the lost Seaman, and were met by Officer K. Newman in Harbor Police Unit #5308. The Seaman was turned over to Cpl. George and Officer Newman. Efforts to communicate with the Seaman met with negative results, due to the language barrier. Capt. P. Major, Harbor Police Department, arrived at Headquarters for duty, she contacted a person she knew who spoke several languages. This person made contact by telephone with the Seaman, and afterwards, informed Capt. Major that the Seaman sounded as though he was Russian. After hearing the word Russian, the Seaman responded 'Ya',,'Ya', Ruska' Ruska', from this, it were determined that the Seaman was Russian.

At approximately 2222 hours, two (2) Immigration Officers arrived, and they tried to communicate with the Seaman, but were unable to do so due to the language barrier. They were briefed on what had occurred, and that the Seaman may possibly be Russian. Officer Newman casually mentioned to the agents that the Seaman may want to defect

At approximately 2225 hours, the two Immigration Agents departed with the Seaman, and stated they would have an interpreter to meet them and find out where his ship is located.

Seaman:
Name: Muroslah, Medwid Russian DOB: 03-24-60
Address: Silco, Sokol, LWOW, USSR.
Shipping Agent: Universal Shipping Company NOLa.
Name Of Vessel: M/V Marshal Koniew
Location Of Vessel: Belle Chase Anchorage, Belle Chase, La.

The above for your information and handle under Harbor Police Department item # 10-1025-85.

T. Turner, Sergeant
Harbor Police Department

APPROVED A. T. Ben
A.T. BEN, SUPERINTENDENT
HARBOR POLICE DEPARTMENT

BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS
(A Unit of Local Government of the State of Louisiana)
INTER-OFFICE COMMUNICATION

TO: Sergerent T. Turner **DATE:** October 26, 1985

FROM: Corporal W. George **C.C.**

SUBJECT: Lost Seaman:

At approximately 2140 hours on 10-24-85, Corporal W. George recieve a called from a New Orleans police officer that stated he had a lost seaman, at that time officer George advised the officer to asked the seaman for his Immigration pass. The seaman refused to give the officer the paper and left the station. At approxomately 2155 hours I recieve another called from the officer saying the subject had returned, the paper was given to the officer but the officer could not read the writting on the paper. The officer then advised if he had a car available he would send the subject to Harbor Police Headquarter, at that time I notified Boarder Patrol and asked them to send me a agent. At approximately 2208 hours a N.O.P.D. officer arrived with the subject and turned him over to Harbor Police. Effert was made to obstained the name of the vessell but to no avail. At approximately 2222 hours two border Patrol officer arrived and tried to communicate with the the subject but to no avail. At approximately 2225 hours border patrol departed with the subject and stated they would have an interpreter to meet them and find out where where his ship was located.

Subject Name: Muroslah, Medwid Russain Male D.O.B. 03-24-60
Address: Silco, Sokol, Lwow, USSR
Shipping Agent: Universal Shipping Company New Orleans, La.
Name Of Vessell : M/V Marshal Koniew
Location Of Vessell: Belle Chase Anchanage, Belle Chase, Louisiana

Willie George, Corporal

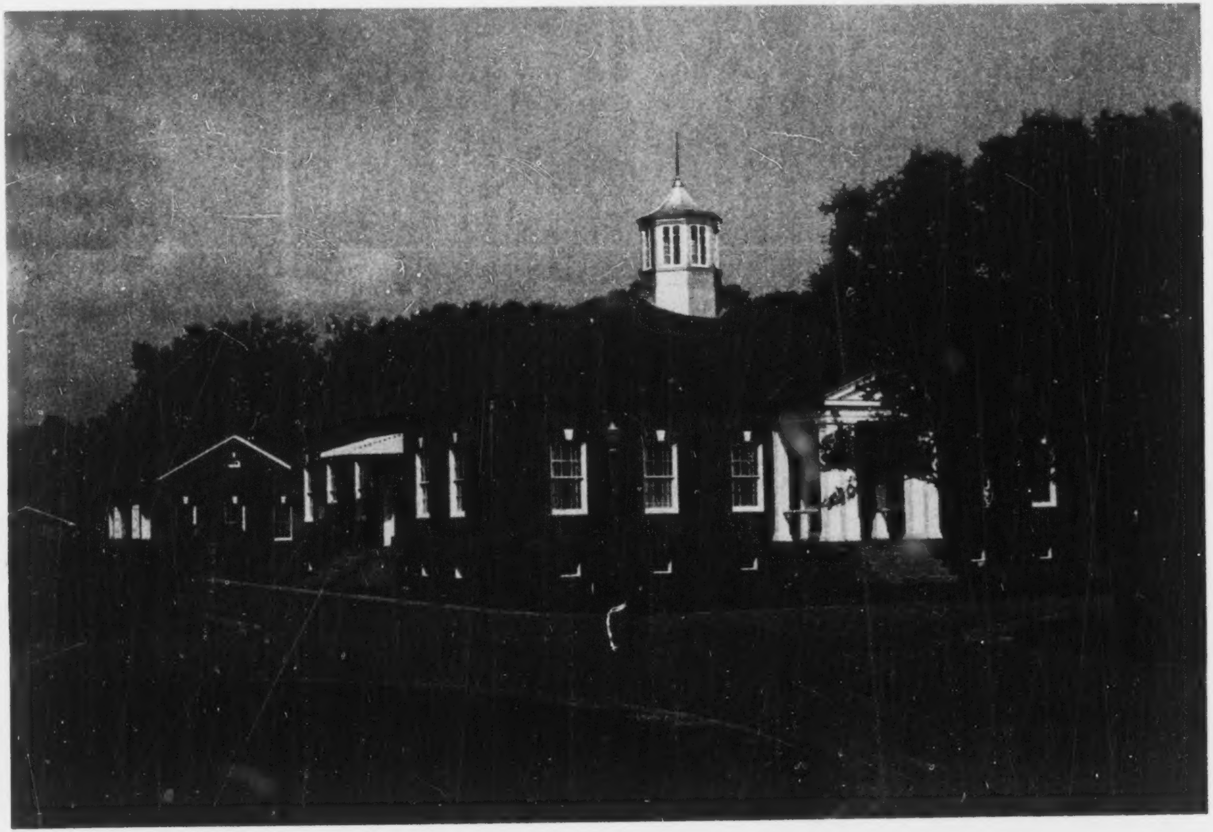
ON THURSDAY, OCTOBER 24, 1985 AT APPROXIMATELY 2150 HOURS WHILE ON PATROL OFFICER NEWMAN WAS FLAGGED DOWN BY AN NOPD UNIT AT CANAL ST. AND THE RIVER. THE NOPD OFFICER REQUESTED THAT OFFICER NEWMAN SHOW HIM WHERE HARBOR POLICE HEADQUARTERS WAS LOCATED SO THAT HE COULD DROP OFF A LOST SEAMAN. THE NOPD OFFICER STATED THAT HE HAD TALKED TO THE DESK SERGEANT BY PHONE AND WAS EXPECTED AT HEADQUARTERS.

ONCE AT HEADQUARTERS THE NOPD OFFICER DEPARTED. OFFICER NEWMAN AND CORPORAL GEORGE THEN ATTEMPTED TO COMMUNICATE WITH THE SEAMAN TO IDENTIFY HIS NATIONALITY AND SHIP LOCATION BUT FOUND THIS TO BE ALMOST IMPOSSIBLE. THE ONLY PAPERS IN POSSESSION OF THE SEAMAN WAS AN UNKNOWN TYPE OF DOCUMENT WITH FOREIGN WRITING AND AN OFFICIAL LOOKING SEAL. AT THIS TIME CORPORAL GEORGE HAD NOTIFIED U.S. IMMIGRATION WHO STATED THAT SOMEONE WOULD BE AT HEADQUARTERS SHORTLY.

AT THIS TIME CAPTAIN MAJOR, WHO WAS AT HEADQUARTERS AT THE TIME, CONTACTED AN UNKNOWN PERSON BY TELEPHONE. CAPTAIN MAJOR STATED THAT THIS PERSON SPOKE SEVERAL LANGUAGES AND COULD POSSIBLE ASSIST IN DETERMINING THE SEAMAN'S NATIONALITY. AFTER ATTEMPTING TO SPEAK TO THE SEAMAN BY PHONE THE UNKNOWN PERSON TOLD CAPTAIN MAJOR THAT THE SEAMAN SOUNDED AS THOUGH HE WAS RUSSIAN. AFTER HEARING THE WORD 'RUSSIAN' THE SEAMAN RESPONDED 'YA! YA! RUSKA! RUSKA!' FROM THIS THE OFFICERS DETERMINED THAT THE SEAMAN WAS RUSSIAN.

AT APPROXIMATELY 2215 HOURS TWO UNIDENTIFIED U.S. IMMIGRATION BORDER PATROL AGENTS ARRIVED. AFTER BEING BRIEFED AS TO WHAT HAD OCCURRED THE TWO AGENTS SHOWED THEIR CREDENTIALS TO THE SEAMAN AND ATTEMPTED TO COMMUNICATE WITH HIM. THIS ATTEMPT FAILED. THE AGENTS ALSO COULD NOT READ THE WRITING ON THE SEAMAN'S PAPERS. THE AGENTS DID AGREE THAT THE SEAMAN WAS PROBABLY RUSSIAN AND STATED THAT THEY WERE GOING TO TAKE THE SEAMAN ACROSS THE RIVER AND CONTACT A TRANSLATOR TO MEET THEM AT BORDER PATROL HEADQUARTERS. THE AGENTS LEFT WITH THE SEAMAN AT APPROXIMATELY 2230 HOURS.
IT SHOULD BE NOTED THAT OFFICER NEWMAN HAD CASUALLY MENTIONED TO THE AGENTS THAT THE SEAMAN COULD POSSIBLE WANT TO DEFECT.

K. NEWMAN



BORDER PATROL STATION

PHOTO BY CSCE STAFF

RECORD OF DEPORTABLE ALIEN

(See A.M. — 2790.31 - 34 for Instructions)

Family Name (Capital Letters) Given Name Middle Name: MYROSLAW, Medwid
Country of Citizenship: RUSSIA
Passport Number and Country of Issue:
File Number: A16 058 032
U.S. Address (Residence) (Number) (Street) (City) (State) (Zip Code):
Date, Place, Time, Manner of Last Entry: EWI PRIOR TO INSPECTION 10/24/85 M/V MARSHAL KONIEW(USSR) D-1
Passenger Boarded At:
Number, Street, City, Province (State) and Country of Permanent Residence: Silec, Sokol, Lwow, USSR
Birthdate: 3/24/60 (25)
Date of Action: 10/24/85
Location Code: NLL NLL
City, Province (State) and Country of Birth: Same as above
AR: X
Form: (Type & No.) ☐ Lifted ☐ Not Lifted
Visa Issued At—NIV No.:
Social Security Account Name:
Date Visa Issued:
Social Security No.:
Send C.O. Rec. Check To: --

PLEASE TYPEWRITE OR PRINT IN BLOCK CAPITAL LETTERS

Sex: M
Hair: BRN
Eyes: BLU
Complexion: LIGHT
Height: 70
Weight: 174
Occupation: Crewman
Scars or Marks: N/V
F.B.I. No.:
Marital Status: ☒ Single ☐ Separated ☐ Widow(er) ☐ Married ☐ Divorced
Method of Location/Apprehension: BP OA
(At/Near): New Orleans
Date & Hour: 10/24/85 11:30 PM
By: Bashaw and Spurlock
Status at Entry: EWI
Status When Found: TRAVEL
Length of Time Illegally in U.S.: W/72 Hrs.

Immigration Record: C/N
Criminal Record: C/N
Name, Address, and Nationality of Spouse (Maiden Name, if appropriate): N/A
Number & Nationality of minor Children:
Father's Name, and Nationality and Address, if Known: Wasyl (USSR) Same
Mother's Present and Maiden Names, Nationality, and Address, if Known: Anna (USSR) Same
Monies Due/Property in U.S. Not in Immediate Possession: ☒ None Claimed ☐ See Form I-43
Fingerprinted: ☒ Yes ☐ No
Lookout Book Checked: ☒ Not Listed ☐ Listed, Code ____
Deportation Charge(s) (Code Words): ROTEN
Name and Address of (Last) (Current) U.S. Employer: Universal Shipping, New Orleans, La.
Type of Employment: Electrician
Salary: $____ hr.
From: 9/85 To: 10/85

Narrative (Outline particulars under which alien located/apprehended. Include details, not shown above, re time, place, manner of last entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior) Alien has been advised of communication privileges pursuant to 8 CFR 242.2(e).
Initial ________ Date 10/24/85 Subject advised of rights per 8 CFR 287.3.

Subject claims to be a citizen and native of Russia.

Subject last entered the UNited States as set forth above as a D-1 Crewman but deserted the M/V Marshal Koniew before having been inspected by an Immigration Officer.

Subject claims to have signed on the vessel at Ryeka, Yug. about 1 month ago. Subject signed on as an electrician.
Subject claims that he jumped ship in the United States for political and moral reasons.
Subject left his passport and gear on board the ship.

Subject has no friends or relatives in the United States.

Interpreter: Irene Padoch, 71 East 7th St., New York, New York.

No Funds.

The subject was turned over to the
Agent and returned to Vessel. from bottom up):
NLL-36-166

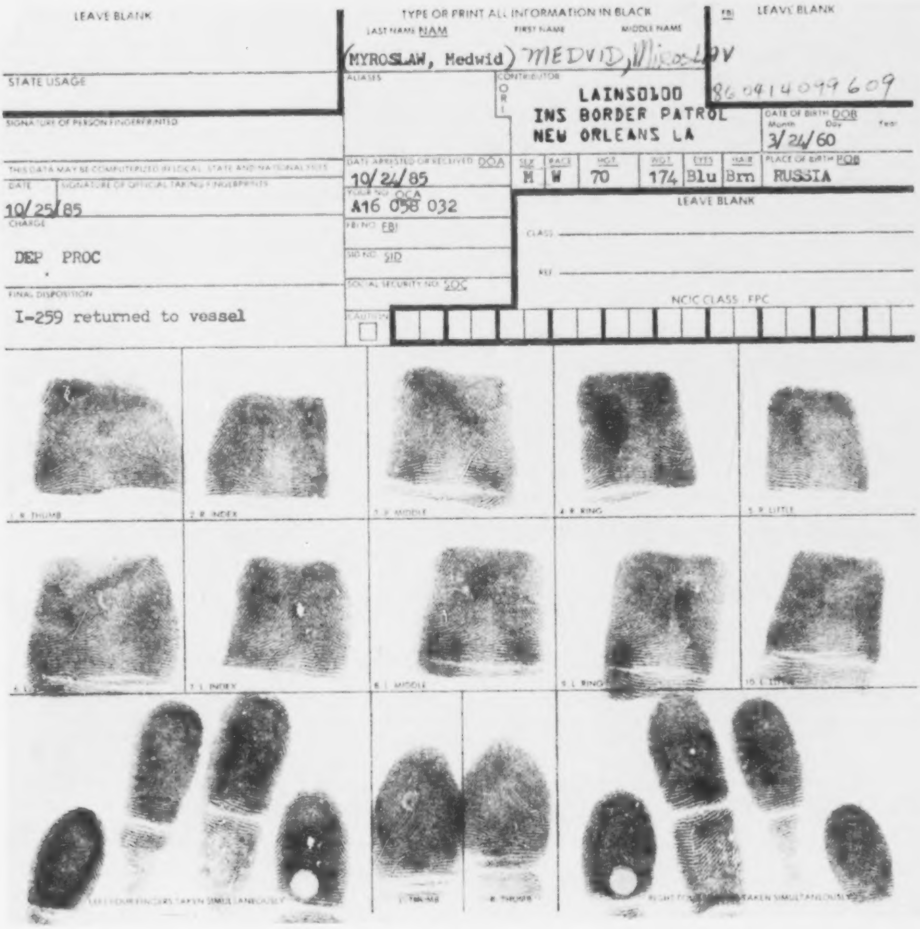
Ernest M. Spurlock.
Ernest M. Spurlock, BPA
(Signature and Title)

DISTRIBUTION
ORIG: FILE
COPY: CPA NLL
COPY: STA FILE

Received (subject and documents) (report of interview) from
Officer: Spurlock
________ 19 85 at ________ ( ) M.
Disposition: I-259 and returned to Vessel
(Receiving Officer) ________

Form I-213 (Rev. 4-18-79)Y UNITED STATES DEPARTMENT OF JUSTICE Immigration and Naturalization Service

A16 058 032



LEAVE BLANK

TYPE OR PRINT ALL INFORMATION IN BLACK

LAST NAME NAM FIRST NAME MIDDLE NAME

(MYROSLAW, Medwid) MEDVID, Miroslav

FBI LEAVE BLANK

STATE USAGE

ALIASES

CONTRIBUTOR ORI

LAINS0100
INS BORDER PATROL
NEW ORLEANS LA

86 0414 099 609

SIGNATURE OF PERSON FINGERPRINTED

DATE OF BIRTH DOB Month Day Year 3/24/60

THIS DATA MAY BE COMPUTERIZED IN LOCAL, STATE AND NATIONAL FILES

DATE ARRESTED OR RECEIVED DOA 10/24/85

SEX M

RACE W

HGT. 70

WGT. 174

EYES Blu

HAIR Brn

PLACE OF BIRTH POB RUSSIA

DATE 10/25/85

SIGNATURE OF OFFICIAL TAKING FINGERPRINTS

YOUR NO. OCA A16 058 032

LEAVE BLANK

CHARGE

DEP PROC

FBI NO. FBI

CLASS

SID NO. SID

REF.

SOCIAL SECURITY NO. SOC

NCIC CLASS - FPC

FINAL DISPOSITION

I-259 returned to vessel

CAUTION ☐

1. R. THUMB
2. R. INDEX
3. R. MIDDLE
4. R. RING
5. R. LITTLE
6. L. THUMB
7. L. INDEX
8. L. MIDDLE
9. L. RING
10. L. LITTLE
LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY
L. THUMB
R. THUMB
RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

UNITED STATES DEPARTMENT OF JUS
Immigration and Naturalization Service

NOTICE TO DETAIN, DEPORT, REMOVE OR PRESENT ALIENS

PORT OF New Orleans, Louisiana DATE 10-24-85

To the Owner, Agent, Consignee, Charterer, Master, Commanding Officer, or Officer in Charge of the

M/V MARSHALL KONYEV
(Name of vessel or aircraft identification)

Universal Shipping Company Line.

Pursuant to the provisions of the Immigration and Nationality Act, and the Regulations issued by the Attorney General thereunder, you are directed to–

☒ Detain on board.

☒ Deport from the United States.

☐ Remove to ________ * on ________, 19__, at ______M.

☐ Present to ________ on ________

for the following reason (s) Section 241(a)(2) of the Immigration and Nationality Act in that, you entered the United States without inspection.

the alien(s) named below:

NAME	STATUS ON VESSEL OR AIRCRAFT (1st, 2d, 3d, or tourist class passenger, member of the crew; stowaway etc.)
MYROSLAW, Medvid	Chewman
DOB: 3-24-60, USSR	

J C Bo
(Immigration Officer)

Receipt of the above notice is hereby acknowledged:

Mikhal Filov UNIVERSAL SHPG 10-25-85 19__, at 0045 M.
(Signature & Title of person signing receipt) (Date) (Time)

________ 19__, at ______M.
(Signature & Title of person signing receipt) (Date) (Time)

________ 19__, at ______M.
(Signature & Title of person signing receipt) (Date) (Time)

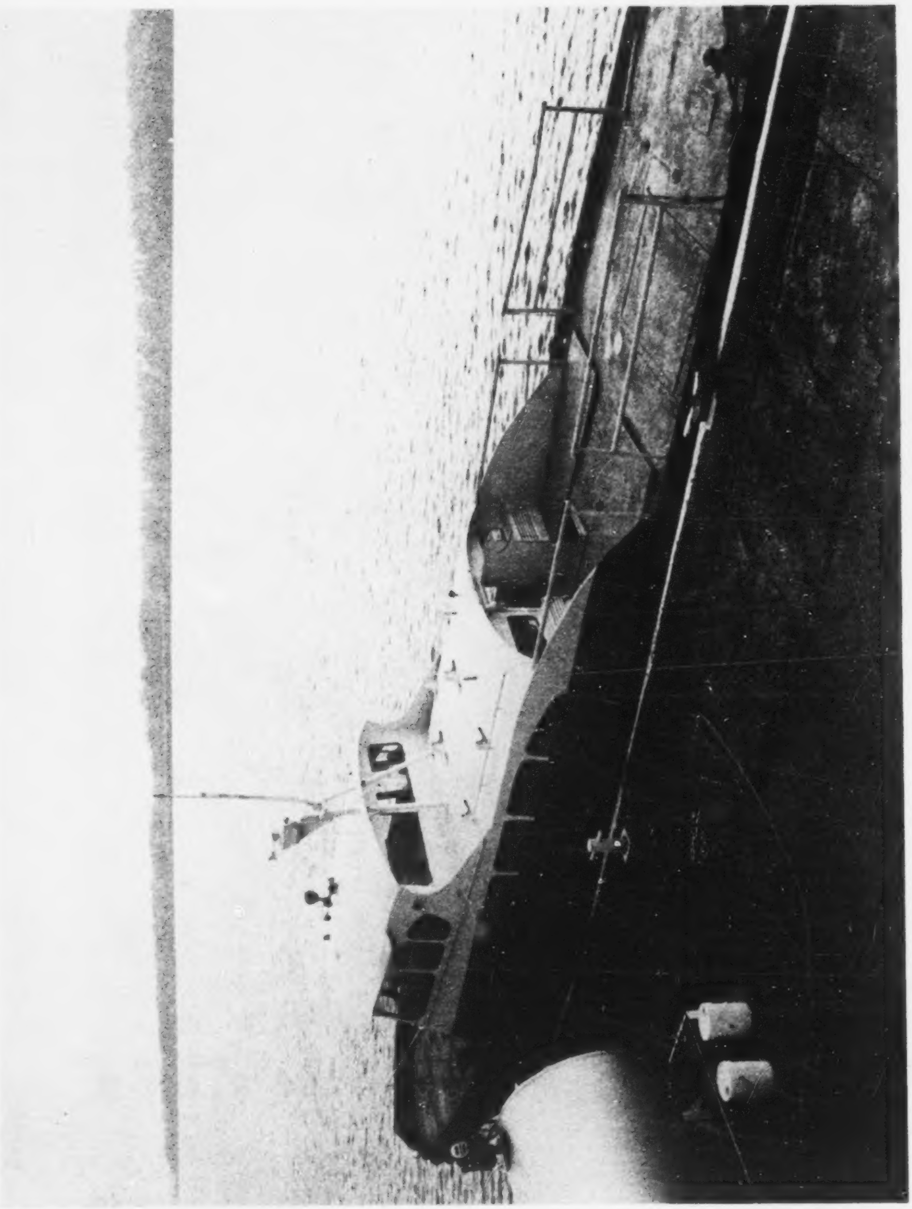
*When removal to the immigration station is directed, the aliens must be detained on board the ship on which they arrived pending delivery to the immigration station. Such transfer must be made by the most direct and expeditious route with the least possible contact with the public, and at the expense and responsibility of the steamship company. Aliens who have been held for further medical examination in the belief that they are suffering from communicable disease must be completely isolated from other passengers and from the public.

FORM I-259 (REV. 10-1-69)

☆ U.S. Government Printing Office 1978—772-821/488

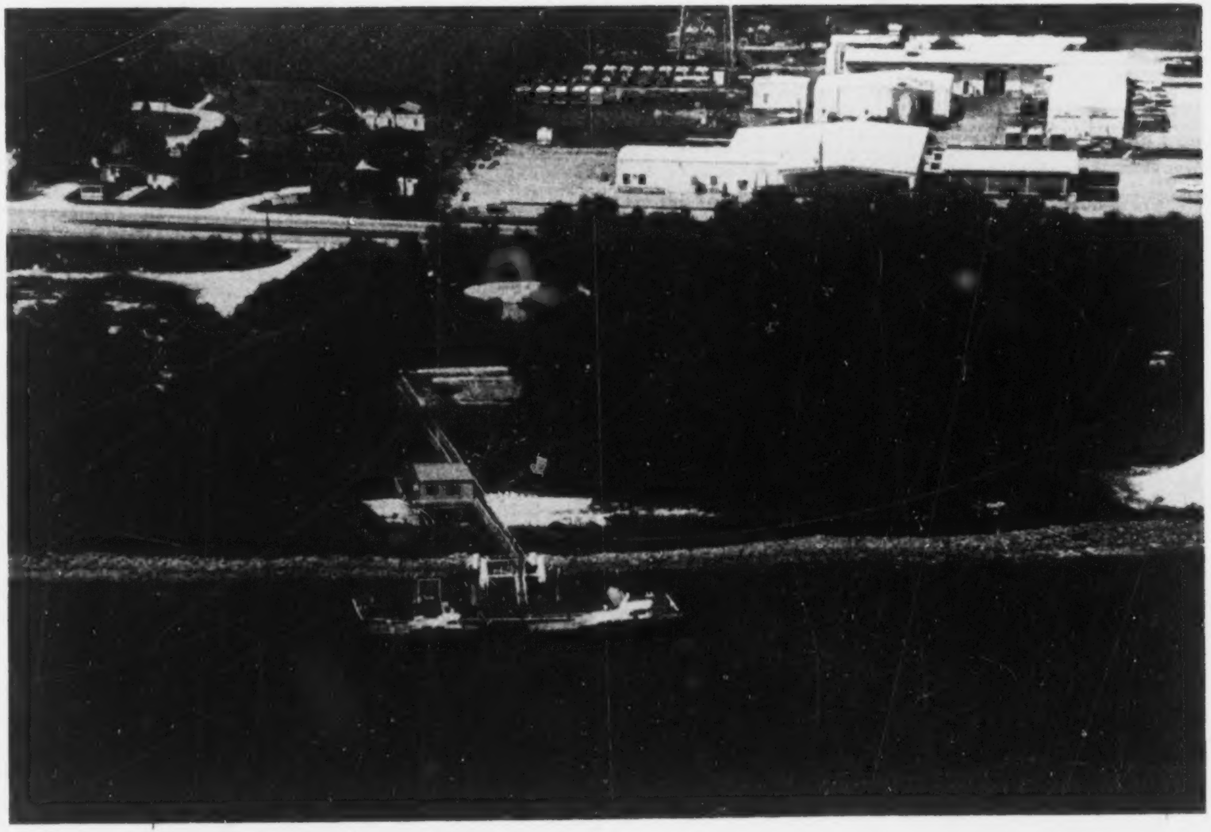
PORT SHIP SERVICE OFFICE

PHOTO BY CSCE STAFF



PORT SHIP SERVICE LAUNCH

PHOTO BY CSCE STAFF



PORT SHIP SERVICE LAUNCH SITE

PHOTO BY CSCE STAFF

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

701 Loyola Avenue
New Orleans, Louisiana
70113

Please refer to this File Number:
A16 058 032

Date: October 25, 1985

Mr. Rionges TKACHENKO
Master of the Motor Vessel MARSHAL KONIEW
Belle Chasse Dock
Belle Chase, Louisiana
and
Universal Shipping Company
11 James Boulevard, Suite 240
Saint Rose, Louisiana

Gentlemen:

Your attention is directed to Section 215 of the Immigration and Nationality Act (Title 8, Section 1185 U.S.C., as amended by the Act of October 7, 1978 (92 Stat. 993), and State Department Regulations 22 CFR Parts 46 and 53. Section 215(a) of the statute cited provides that

> "Unless otherwise ordered by the President, it shall be unlawful
>
> (1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, subject to such limitations and exceptions as the President may prescribe;
> (2) for any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this section;
> (3) for any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself/herself or for another;
> (4) for any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;
> (5) for any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his/her use;
> (6) for any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;
> (7) for any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid.

Pursuant to the authority cited, unless and until this notice is cancelled, the following named person may not be transported outside the United States.

Mr. Madrid NYROSLAW

Should this person apply to your company for transportation to a foreign destination, this fact should immediately be brought to the attention of the undersigned.

PERSONAL SERVICE: ____________
Immigration Officer

Very truly yours,

Ron Parra

RONALD B. PARRA
Acting District Director
New Orleans, Louisiana

Form I-281
(Rev.1-15-80)N

Examination approx 4^{00}PM EDT

In the company of Dr. Caruthers and Mr. Sell, I was allowed to observe the seaman who had been earlier identified by Border Patrol Agent Spurlock who was one of the Agents having contact with the seaman ashore and at the Border Patrol Station. I had observed the seaman between 5 & 6 PM on 10-25-85 when he was deeply sedated and restrained to the bed in the infirmary.

My observations during the viewing and brief examination today, 10-26-85 allowed me to conclude That it was the one and same seaman.

The seaman seemed rather alert and in an anxious state. From the beginning of the viewing, he appeared anxious to tell our company that he was well and, in the words of the interpreters, that he did not ne [illegible] examining. He glanced from each of the Soviet Representatives to our doctor to make some [illegible]nt. After making statements to Mr. Sell he appeared to look toward the Embassy Representative for approval of what he had just said.

He didn't appear to be having any pain and all of his extremities were mobile.

He was amphatic in each statement he made. He appeared coached, judged by his strong vocal tone and his quick response to any question.

There were no apparent bruises or contusions beyond the injury to the bandaged left hand and arm.

I compared the passport of the seaman to his face and also beleive that he is the same person named there-on.

Examination 10/26/85 Approx 4^{00} PM. EDT

Appearance: brown hair, blue eyes, short stature, approx 150 lb, approx 25-30 years of age.

General: alert, oriented, conversant, no obvious distress (except more anxious than medical situation would explain).
Pulse (radial): strong, 96 Resp: grossly normal
capillary refill of nail beds prompt (fingers, left hand)

ce/Head: No obvious trauma
Ears: No obv. trauma or blood from canals
Eyes: Pupils mid-position, equal, reactive to light.
Nose: Grossly normal. No evidence of trauma
Mouth: Not examined but no blood on lips/teeth

Lungs: good breath sounds all areas
Heart: regular rhythm
Abdomen: no bruises/evidence of trauma. Soft and non tender.
Posterior Thorax: No evidence of trauma.
Extremities: all normal without evidence of trauma or recent restraints (i.e. indentations/abrasions/bruises at ankles or wrists) **except** left arm which was bandaged from base of fingers to proximal ⅓ of upper arm. There were also several superficial, clean lacerations on exposed fingers.

Neurological: **cranial nerves** grossly normal by simple observation.
Cerebellar function: not tested
motor: able to move all extremities on demand.

Assessment: ① Minor injury to left arm
② Anxiety
③ No evidence of altered mental status from medications/drugs.

John M. Carruthers

[illegible] 3

Talking Points
Medvid Case

-- I wanted to get in touch with you on the situation in New Orleans.

-- I don't need to tell you what a sensitive problem this is, or that both sides have an interest in getting it behind us a quickly and painlessly as possible.

-- We have suggested to your Embassy in Washington a possible scenario for doing so.

o The seaman could be taken off the ship for "medical reasons." (there is a U.S.N. medical facility within a mile of the Soviet vessel, but we could find a civilian location if the Soviets preferred) Such actions are common and we understand that the seaman may in fact have suffered injuries in being returned to the ship;

o He could.be accompanied by the ship's captain and Soviet Embassy officials on the scene;

o If, during the course of an interview at the medical facility, the seaman indicated he had no desire to remain in the U.S., he and his vessel would be allowed to depart;

o If he indicated a desire to stay, there need be no cause for embarrasment on the Soviet side. There is ample precedent for such cases. I can guarantee you we would not publicly exploit such a development.

-- I am calling because we have had nothing back from your side.

-- We do not want this incident to have any broader impact on our relations, particularly at this critical juncture.

-- We are concerned that allowing the case to drag on can only make the political problem more difficult to deal with and spoil further the atmosphere for the important work which lies ahead.

-- I therefore want you to know that unless your people in New Orleans have been authorized to accompany the seaman to a medical facility and he has left the ship by noon, tomorrow, we intend to exercise our legal right to remove the seaman from your vessel in order to determine his intentions.

-- We have ample authority under our own and international law to take these actions. [FYI: The legal basis for this action is Section 1185 of Title 8 of the U.S. Code [Section 215 of the Immigration and Nationality Act of 1952, as amended]; federal implementing rgulations for that law [22 CFR part 46; 88 CFR part 215]; established U.S. asylum policies and related international agreements pertaining to refugees; and our general powers to maintain the peace and serenity of our ports and internal waters. There may also be violations of our criminal law involved.]

-- (If Dobrynin claims the ship is Soviet territory) I don't intend to get into a legal debate. The vessel is not Soviet territory; we have jurisdiction over events on the ship because it is in U.S internal waters.

-- I am sure you want to avoid a physical confrontation as much as we.

-- I therefore hope you can get whatever instructions you need to work with us quickly to resolve the problem.

-- I understand your people in New Orleans have indicated we will not have a response before late tomorrow afternoon. I want to make clear that that is unacceptable in view of what I have said earlier.

-- I would particularly caution you against any attempt to remove the seaman by clandestine means.

-- We will stop any Soviet vessel which we have reason to suspect is attempting such a move.

US BORDER PATROL PHOTO

M/V MARSHALL KONEV

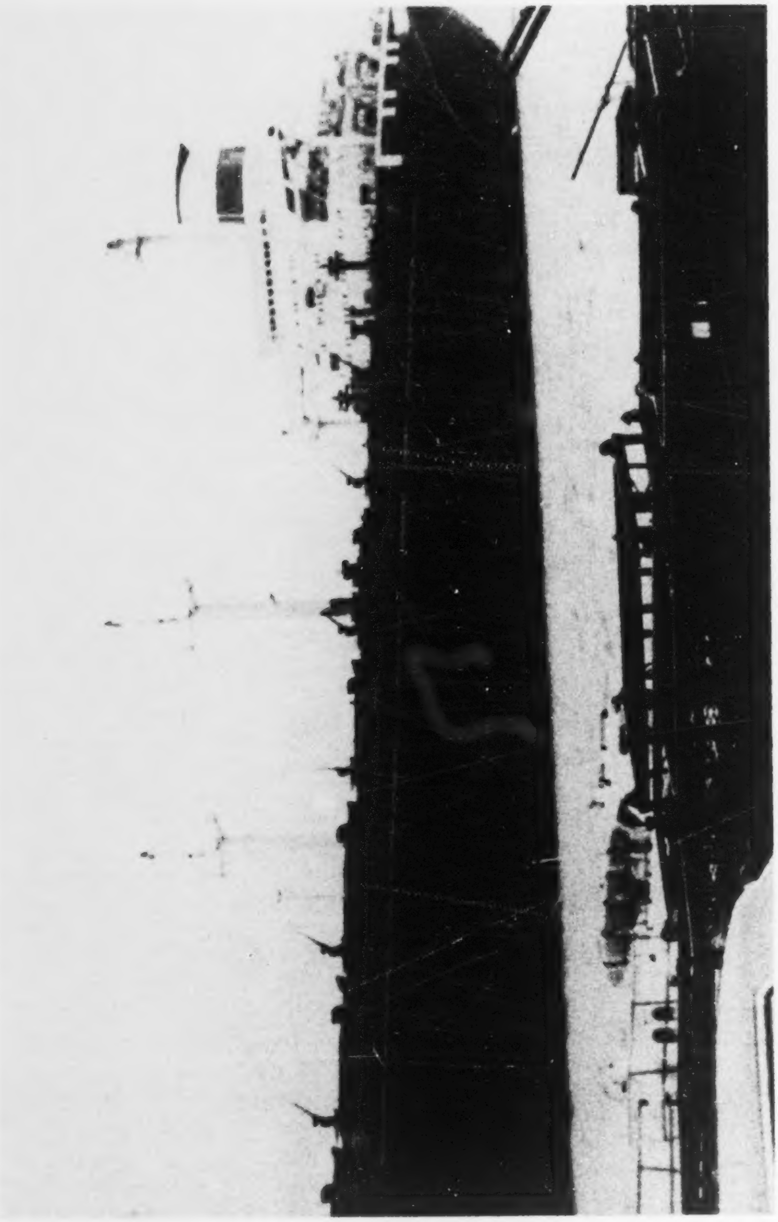
USSR OFFICIALS DISEMBARK KONEV

US BORDER PATROL PHOTO

МАРШАЛ КОНЕВ

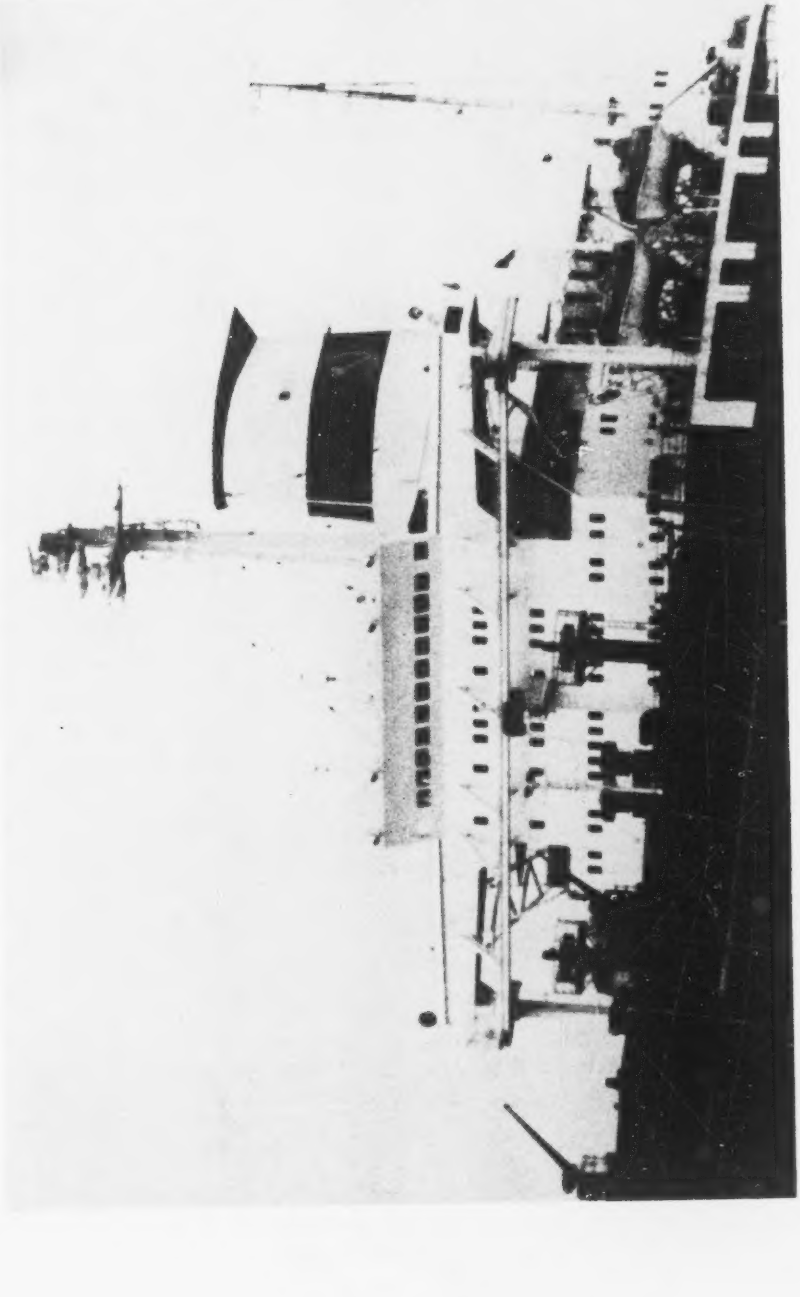
M/V MARSHAL KONEV

US BORDER PATROL PHOTO



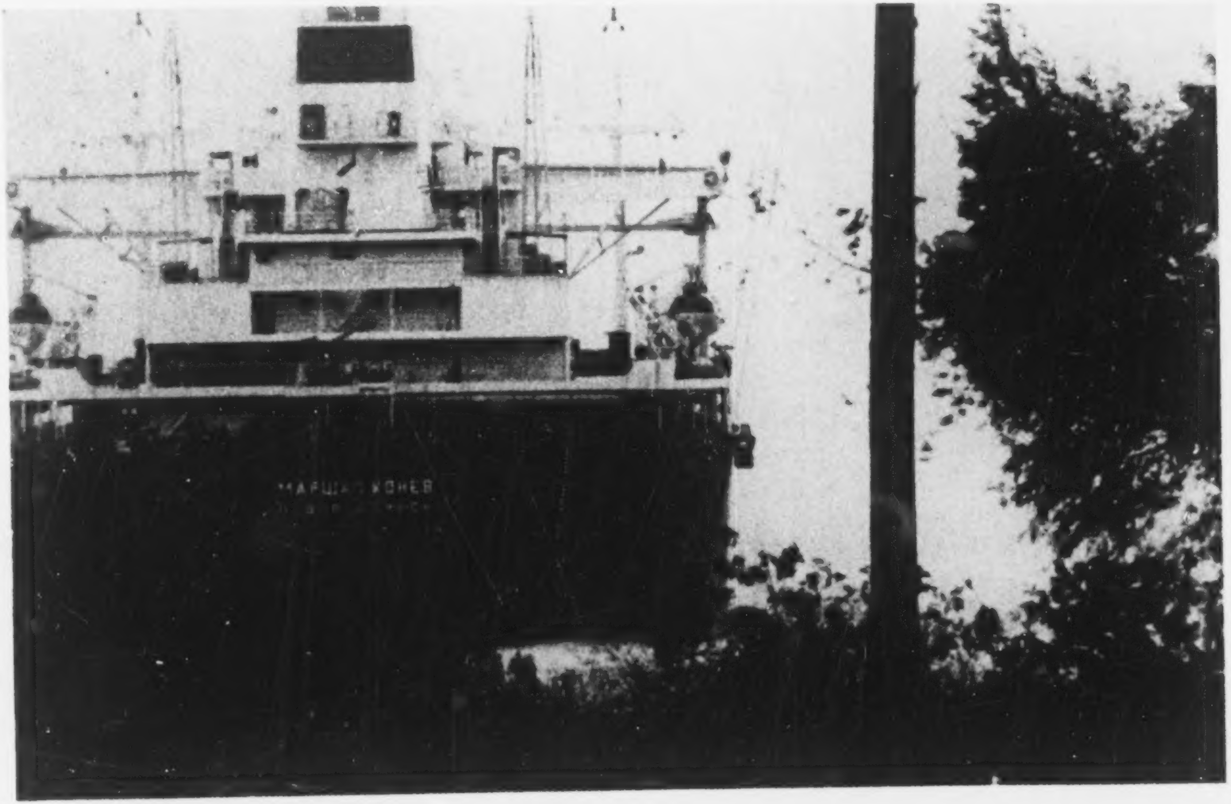
M/V MARSHALL KONEV

US BORDER PATROL PHOTO



M/V MARSHAL KONEV

US BORDER PATROL PHOTO


МАРШАЛ КОНЕВ

M/V MARSHALL KONEV

US BORDER PATROL PHOTO

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
U.S. Border Patrol Sector Headquarters
3819 Patterson Road
New Orleans, Louisiana 70114

Mr. Miroslav Medvid
c/o Motor Vessel MARSHAL KONIEV
Belle Chasse Dock
Belle Chasse, Louisiana

Please refer to this File Number:
A16 058 032

Date: October 28, 1985

Gentlemen:

Your attention is directed to Section 215 of the Immigration and Nationality Act (Title 8, Section 1185 U.S.C., as amended by the Act of October 7, 1978 (92 Stat. 993), and State Department Regulations 22 CFR Parts 46 and 53. Section 215(a) of the statute cited provides that

"Unless otherwise ordered by the President, it shall be unlawful

(1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, subject to such limitations and exceptions as the President may prescribe;

(2) for any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this section;

(3) for any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself/herself or for another;

(4) for any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;

(5) for any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his/her use:

(6) for any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;

(7) for any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid.

Pursuant to the authority cited, unless and until this notice is cancelled, the following named person may not be transported outside the United States.

Mr. Miroslav Medvid

Should this person apply to your company for transportation to a foreign destination, this fact should immediately be brought to the attention of the undersigned.

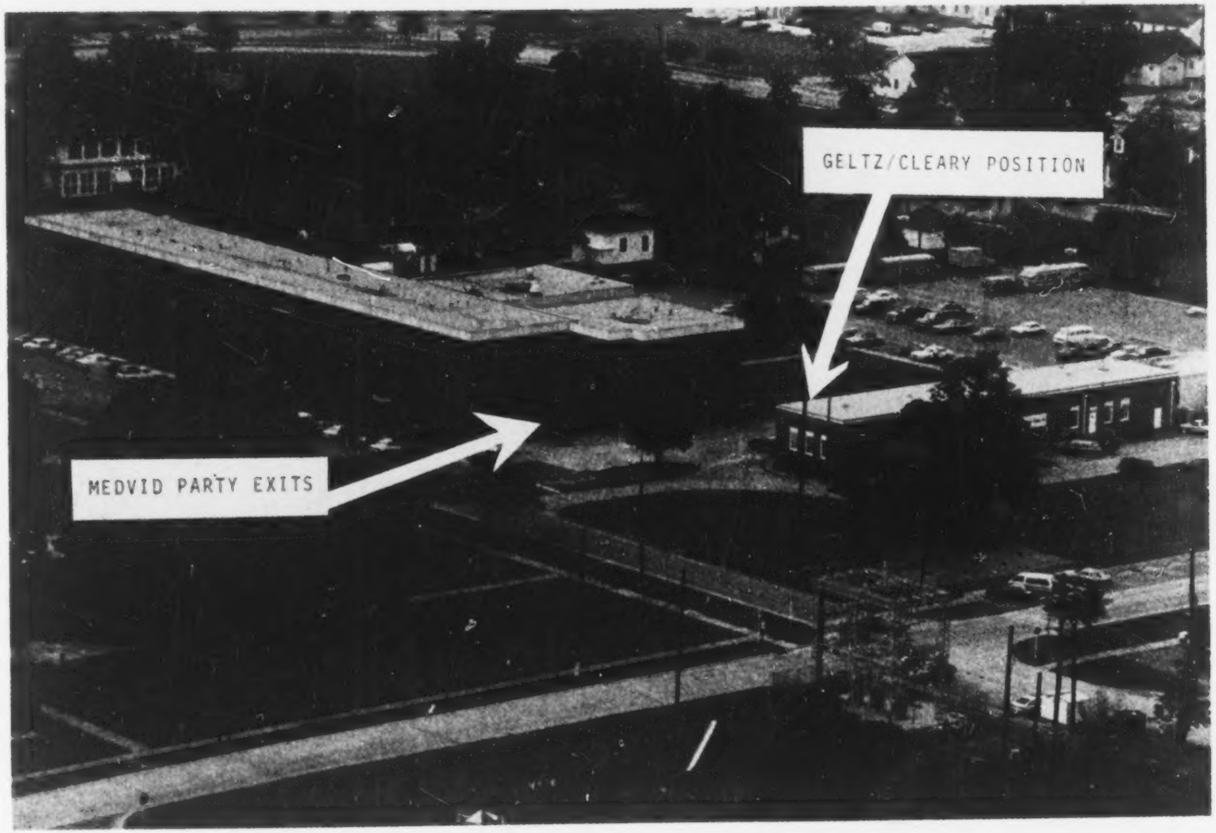
PERSONAL SERVICE:
Immigration Officer

Very truly yours,

Witness:

Witness:

Form I-281
(Rev.1-15-80)N
GPO [illegible]


GELTZ/CLEARY POSITION
MEDVID PARTY EXITS

NAVAL AIR STATION BOQ

PHOTO BY CSCE STAFF

AFFIDAVIT

My name is ROSS N. LAVROFF, and I reside at 2727 Fairview Avenue East, Seattle, Washington, 98102. I have been a self-employed contract interpreter for the past 27 years, mostly for the US Department of State, primarily working with the Russian language. I am also proficient in the Ukrainian language.

I recently had serious heart surgery, and am not able to travel at this time. However, I furnish the following information of my own free will and without duress or promises of any kind.

On October 26, 1985, I was contacted and immediately employed by the State Department to assist with interviews of Soviet seaman MIROSLAV MEDVID, in the New Orleans, Louisiana, area. After lengthy negotiations with Soviet officials aboard the Soviet vessel Marshal Konev, the State Department gained access to MEDVID and I assisted with several interviews of MEDVID under conditions within US control, on a US ship and on US soil. RNL The incident ended when MEDVID was returned to his ship on October 29, 1985.

I recall the following specific information about the MEDVID incident:

1. When I arrived aboard the Konev on Saturday evening, October 26, 1985, I found several Americans already on board, including State Department official LOUIS SELL.

2. SELL, who earned my highest regard as the State Department official in charge of the MEDVID interviews, was proficient in the Russian language, but we agreed that he

--page 1 of 5 pages--

RNL

RMJ

would speak only English during formal interviews, while I translated all his statements and questions to MEDVID into Russian, and in reverse. RMJ

3. I was the only person, American or Soviet, who was with MEDVID at all times we had him off the Konev 10/28/85 to 10/29/85, except for several hours when MEDVID was locked alone in his bedroom at the Naval Base BOQ, with an American present at the locked door, during that night, and a Soviet present in the living room. RMJ

4. I am convinced that the man we identified and interviewed as MIROSLAV MEDVID is identical to the man whom the US Border Patrol had initially sent back to the Konev, based upon my understanding of efforts by SELL and other Americans to assure that identity, as well as my own observations of and conversations with MEDVID.

5. I would describe MEDVID as a caucasian male, about 22 years old, probably about 5'10" tall and about 150 pounds, medium build, medium complexion, medium everything, and also as a very smart young man.

6. I spoke in the Russian language with MEDVID, for several reasons, including:

a) MEDVID was both comfortable and proficient in Russian, and never indicated a preference for Ukrainian

b) Russian, but not Ukrainian, was spoken by all Soviet representatives present at interviews

c) Russian was the official language on MEDVID's ship and the proper language for such situations

RMJ

RML

7. I personally interpreted all formal interviews between MEDVID and Americans, and was present during almost all conversations between MEDVID and other Soviets (while we had MEDVID off his ship). RML

8. The environment for interviews was made as comfortable and non-threatening for MEDVID as possible, under the circumstances.

9. We agreed to be alert for any sign from MEDVID that he really wanted to stay in the United States, and he did "wink" at me several times, meaning to me that he knew everything was "just a game".

10. I was never able to speak privately to MEDVID, so cannot be sure of his exact message, but I feel he wanted me to know that he could not say what he really felt.

11. SELL and others present seemed to feel the same as I did about MEDVID's real intentions, but we never received a direct, positive response sufficient to allow us to keep MEDVID in the United States, although I believe that we gave him many opportunities to do so.

12. I remain convinced that MEDVID truly desired to remain in the United States, but that he could not bring himself to say that, undoubtedly because of Soviet threats to his family, and he repeatedly said he wished "to see my mama and my papa again", convincing me that he feared he would never see them if he stayed here. (That they would be killed). RML

13. I witnessed MEDVID sign a statement declaring his desire to return to the USSR, at the Naval Station BOQ on 10/29/85.

RML

RNL

14. After signing the statement, MEDVID pressed his thumb dramatically on the paper near his signature, and said in Russian, "There! That makes if official!", or words to that effect.

15. I agreed with LOUIS SELL, and other Americans present at the time MEDVID signed the statement, that there was no valid basis for further detaining him.

16. I observed genuine disappointment among US officials present when MEDVID ~~did~~ WAS RNL not able to RNL give us sufficient reason to grant him asylum.

17. During a telephone conversation with a lady identified to me as IRENE PADOCH, the original Ukrainian interpreter for the Border Patrol, I concluded that: a) she did not know what was really happening during her telephone interview with MEDVID; b) she was rushed by the Border Patrol officer to help him make a "quick decision" about MEDVID's intentions; c) she used strange and unidentifiable terms to describe the concept of asylum to MEDVID; and finally, d) that her proficiency in the Russian, Ukrainian, and English languages were all ~~poor,~~ questionable, RNL because she did not even make good sense during my conversation with her.

18. I ascertained that PADOCH never used the Russian word "ubezhishche~~y~~" RNL with MEDVID, although that is the best word for "refuge" in my opinion, but she did use a word sounding like "asyl" (phonetically ah-seal), which I have been unable to identify in Ukrainian or Russian dictionaries, but which

RNL

I believe might be a Greek word, sharing some common root RNL
with the English word "asylum".

19. I am convinced that the moment that the US Border Patrol returned MEDVID to his ship the first time, the whole game was lost. RNL

I hereby affirm the truth of this affadavit. I have placed my initials at the beginning and end of each of the five pages, have initialed all changes made by me, and affixed my signature below, in witness of these facts.

Ross N. Lavroff 3/30/87
ROSS N. LAVROFF date

Sharon K. Altman
notary
State of Washington
County of King
Commission expires 9-19-88

SHARON K. ALTMAN
SEPT. 19, 1988

page 5 of 5 pages

STATEMENT BY MIROSLAV MEDVED

I, Miroslav Medved, have decided to return to my country, the Soviet Union. I do not request asylum in the United States. I make this decision voluntarily, of my own free will after having had full opportunity to discuss my situation with officials of the United States who have made clear that I may remain in the United States if I desire. I have decided not to do so. I am in control of my physical and mental faculties and understand fully that I ~~am~~ would have been free immediately to depart this interview in company of U.S. officials and that if I had chosen ~~choose~~ to do so, I ~~will not be~~ would not have been returned to the custody of Soviet officials.

Miroslav Medved

October 29, 1985

C. 61174
61125056 D XD Q1
FBI
LABORATORY

ЗАЯВЛЕНИЕ МИРОСЛАВА МЕДВИДА

Я, нижеподписавшийся Мирослав Медвидь принял решение возвратиться в мою страну -- Советский Союз. Я не прошу убежища в Соединенных Штатах. Это решение принято мной свободно и добровольно, после того, что мне была предоставлена возможность обсудить мое положение с американскими должностными лицами, которые мне объяснили, что я могу остаться в США если я это желаю. Я решил этого не делать. Я нахожусь в полном распоряжении моих физических и умственных способностей и я понимаю, что по окончании настоящей беседы я был бы свободен немедленно удалиться в сопровождении американских должностных лиц и что, если бы я ~~приму~~ принял такое решение, я не ~~буду~~ был бы возвращен под охрану советских должностных лиц.

Подпись:

Дата: 29 октября 1985г.

Свидетели: ____________________

C-61174

61125056 D XD Q2

FBI LABORATORY

7901 Baymeadows Circle, E., #530
Jacksonville, Florida 32216

Mr. Frank Heath
Commission on Security and Cooperation
in Europe
237 House Annex 2
Washington, D.C. 20515

This statement is to verify that I was present and a witness on Tuesday, October 29, 1985, at Naval Support Activities in New Orleans, La., when Miroslav Medvid signed a statement regarding his repeatedly stated desire to return to the Soviet Union. After he signed his name, I noticed that he then placed his thumbprint on the paper, near his signature. He did this very dramatically and emphatically, as if to symbolize closure to the issue.

I swear to the truthfulness of the above statement.

William M. Hunt III, M.D.

William M. Hunt, III, M.D.
(formerly Major, USAF MC)

Sworn to and subscribed before me
this 3rd day of March, 1987.

NOTARY PUBLIC, State of Florida at Large
My Commission Expires: [illegible]

MEMORANDUM FROM SENATOR HELMS

JURISDICTION AND FACTS RELATING TO MIROSLAV MEDVID

1. The Committee on Agriculture, Nutrition, and Forestry has jurisdiction over the following areas: (a) "Agricultural production, marketing, and stabilization of prices"; (b) "inspection of livestock, meat, and agricultural products"; (c) "study and review, on a comprehensive basis, [of] matters relating to food, nutrition, and hunger, both in the United States and in foreign countries."

2. The grain trade with the Soviet Union is being carried out under the terms of a Long Term Agreement (LTA) with the Soviet Union negotiated by the Secretary of Agriculture and signed on August 25, 1983 for the express purpose of "production" of food and "stabilization" of trade. The Committee has jurisdiction over such trade under (a) in paragraph 1.

3. The Soviet grain trade, like all export shipment of grain, is inspected by the Federal Grain Inspection Service under the U.S. Grains Standards Act. Matters relating to such inspection come under the Committee's jurisdiction under (b) in paragraph 1.

4. The Soviet ship Marshal Konev had a hull inspection by the Federal Grain Inspection at 4:45 PM, Thursday, October 24 at Belle Chasse, Lousiana, and is scheduled for a spout inspection while it is being loaded at the Cargill elevator in Reserve, Lousiana, on November 5.

5. The U.S.-Soviet grain trade obviously includes "matters relating to food, nutrition, and hunger, both in the United States and in foreign countries."

6. The power for "study and review, on a comprehensive basis" of such matters considerably broadens the narrow technical basis which might be implied in the specific legislative jurisdiction. In particular, the Committee has the authority to consider not only the grain trade itself, but the practical conditions under which the grain trade is carried out, particularly those aspects of the trade which take place within U.S. territory.

7. Among the conditions under which the trade is carried out is the question of whether those involved in the trade, e.g., seamen on foreign vessels, have the protection of basic human rights while in U.S. waters. Does the execution of an LTA with the Soviet Union require that aliens within U.S. territory must be denied the protection of the U.S. Constitution? Among the allegations of the denial of human and constitutional rights are the following:

(a) On October 24, between 11:45 PM and 12:45 AM (October 25) Miroslav Medvid asked for political asylum through an interpreter speaking in his native Ukrainian tongue.

(b) At the conclusion of the interview, the INS official asked the translator to reassure Mr. Medvid that nothing would happen to him, and that he would not be physically abused, and that the interview would resume in the morning. However, within approximately one hour of this reassurance, Mr. Medvid was turned over to two employees of the Universal Shipping Company, Mr. Tim Maloz and Mr. Mike Fladd, who conducted him to the offices of the Port Services Company. He was then placed on a PSC launch, piloted by Mr. Ray Guthrie, and taken to the Marshal Konev in company with Messrs. Maloz and Fladd. Thus he was denied the opportunity to be informed of his rights, to study his rights, and to fill out the appropriate INS documentation for political asylum with the assistance of Ukrainian-speaking legal counsel. INS regulations state that applications for political asylum shall be made on Form I-589; this form was never presented to Medvid.

(c) The INS Operations Instructions prescribe the procedures to be followed when processing "immediate action" political asylum requests. Such cases are defined as those involving "any national of the Soviet Union." INS Operations Instuctions specifically address the processing of cases involving crewmen and require that when a crewman requests asylum, as Medvid did, he will be interviewed under oath, and Form I-589 will be executed.

(d) When the PSC launch with Mr. Medvid, Mr. Guthrie, Mr. Maloz, and Mr. Fladd aboard approached the gangway of the Marshal Konev, Mr. Medvid apparently realized for the first time that he was being returned to the ship. He immediately jumped overboard, and began swimming back to the shore. A Soviet mate jumped into the PSC launch, and they pursued Mr. Medvid. Mr. Medvid made it to the levee, climbed over the top, and rolled down into the sand behind. The group from the launch found Mr. Medvid, and attempted to force Mr. Medvid back into the launch. Mr. Medvid resisted forcefully. It is alleged that Mr. Maloz and the Soviet mate held Mr. Medvid down with force, while the launch returned to the ship and brought back seven more Soviet seamen, who carried Medvid back onto the launch after brutalizing him. Witnesses report that an unreasonable amount of force was used to subdue him. Mr. Medvid continued to resist with force and vehemence until he was carried on to the ship. It is Soviet practice to carry KBG agents on such ships for security purposes.

(e) Mr. Medvid remained in the custody of Soviet personnel for three days on the Marshal Konev. On October 28, he was transferred to the U.S. Coast Guard cutter Salvia. A team of at least six U.S. Officials, comprised of representatives of the Department of State, the Immigration and Naturalization Service, the Treasury Department, and a U.S. government doctor, began interviewing him on the Salvia in the presence of two officials from the Soviet Embassy, a Soviet doctor, and the Master of the Marshal Konev. No provision was made for a Ukrainian interpreter or Ukrainian legal counsel, nor was he given an opportunity to complete Form I-589.

(f) Because Mr. Medvid was ill, he was then removed to a nearby U.S. Naval Support Facility on shore, where he spent the night. The State Department has stated that Mr. Medvid was examined medically at this point, but has offered no evidence that he was given a blood or urine analysis in order to determine whether he had been drugged. News reports state that the Soviets have said that Mr. Medvid was a "schizophrenic" who required treatment--a typical response by the Soviets towards those who seek freedom.

(e) On the morning of October 29, while at the U.S. Naval Support Facility, and without benefit of a Ukrainian translator or Ukrainian-speaking legal counsel, Mr. Medvid signed a Russian-language statement indicating his desire to return to the Soviet Union. Once again, this action took place in the presence of Soviet officials. He was then returned to the Marshal Konev.

(f) On the basis of the information presently available, it appears that Mr. Medvid was denied due process under the U.S. Constitution, that he was denied equal protection, and that his basic human rights were violated. He was beaten, possibly drugged, and denied appropriate medical treatment. He was subdued with unreasonable force, and subjected to duress by the presence of Soviet security officials during questioning.

9. The question to be determined is whether grain marketing agreements with the Soviet Union require the United States to ignore equal protection of the law for aliens who enter the United States in connection with the grain trade. Mr. Medvid's appearance before the Committee is essential to obtain a balanced view of the facts in the case.

THE WHITE HOUSE
WASHINGTON

April 6, 1987

Dear Mr. Lamberth:

This letter confirms our response to your recent requests to interview Larry Speakes, former Principal Deputy Press Secretary, and Linas Kojelis, Special Assistant to the President for Public Liaison, in connection with the investigation of the Medvid incident by the Commission on Security and Cooperation in Europe. Mr. Kojelis, as a member of the White House staff, and Mr. Speakes, through his attorney, E. Michael Bradley (Brown & Wood, New York, NY), have asked that we respond to your request on their behalf.

I have been advised that you have previously discussed this matter with C. Dean McGrath, Jr., Associate Counsel to the President, who outlined the basis for our position, and that you and Mr. McGrath reached an understanding on this matter.

We understand that you have already interviewed officials at the Departments of State and Treasury (including the Customs Service) and members of the National Security Council staff who were involved in the response to the Medvid incident. In the context of this cooperation, since Mr. Speakes and Mr. Kojelis have been identified only as potential sources of information and, at the time of the incident, both served on the White House staff as advisers to the President, we do not believe it would be appropriate for either Mr. Speakes or Mr. Kojelis to be interviewed at this time.

We appreciate your interest in this important issue. If we can be of any further assistance, please contact me or Mr. McGrath.

Sincerely,

J.B. Stephens

Jay B. Stephens
Deputy Counsel to the President

Mr. Paul D. Lamberth
Project Director
Commission on Security and
Cooperation in Europe
Congress of the United States
237 House Office Building, Annex 2
Washington, DC 20515

cc: Linas Kojelis
E. Michael Bradley

①

~~OFFICIAL USE ONLY~~

THE WHITE HOUSE
WASHINGTON

ACTION S/S-O:

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OES
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TMA
S/S-S:LF
RF:WEB

January 19, 1978

Presidential Directive/NSC- 27

TO: The Secretary of State

ALSO:
The Secretary of the Treasury
The Secretary of Defense
The Attorney General
The Secretary of the Interior
The Secretary of Commerce
The Secretary of Transportation
The Secretary of Energy
The Director of Central Intelligence
The Administrator, National Aeronautics and Space Administration
The Director, Arms Control and Disarmament Agency
The Director, U.S. Information Agency
The Director, Federal Preparedness Agency

SUBJECT: Procedures for Dealing with Non-Military Incidents

The President has directed that uniform and clearly understood procedures be established within the United States Government for dealing with various types of non-military incidents which could have an adverse impact upon the conduct of our foreign relations.

To assist the Special Coordination Committee in ensuring that the government's decisions are reached expeditiously and that the views of all concerned Departments and Agencies, as well as considerations of both domestic law and foreign policy, are brought together in reaching a decision, the Department of State will have primary responsibility to coordinate government planning and public statements for dealing with such incidents and will keep the White House fully informed throughout.

The following basic procedures shall be observed in dealing with such incidents:

~~Declassified~~/Released on 1/20/81 MICROFILMED
By the National Security Council BY S/S-I
under provisions of E.O. 12065
by B Reger FOI 81-112

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-- All Departments and Agencies in receipt of this Directive are hereby charged to maintain a 24-hour watch supervised by a responsible officer, or such other comparable mechanism as will in the opinion of the Department/Agency and the Department of State be adequate to achieve the objectives of this Directive. It will be the responsibility of this watch to advise the Department of State Operations Center of incidents that are developing in a way that could impact adversely upon the conduct of US foreign relations. Actions already taken or under way by law enforcement agencies will be reported to the Department of State Operations Center, along with those agencies' recommendations for dealing further with the incidents.

-- The Department of State Operations Center will promptly inform appropriate officers of the Department of State and other Agencies concerned and the White House Situation Room of such incidents and will assure timely communication to the Situation Room of information concerning an incident and its development, proposed courses of action intended by the Departments and Agencies concerned, and actions already taken. In the event of interagency disagreement, the Department of State Operations Center will brief the Watch Officers of interested Agencies on the interagency differences and the considerations on which they are based, and will afford these Agencies the opportunity for further comment. The Operations Center will then refer to the White House for final decision the recommendations of interested Agencies. The Operations Center will inform the White House of: (a) any major disagreement among the Agencies, or (b) any known intention of a senior official of an interested Agency to express the views of that Agency directly to the White House.

-- As responsibility for the coordination of Intelligence Community operations will continue to be that of the Director of Central Intelligence, the Operations Center will ensure that the DCI is also promptly notified of such incidents.

-- The Operations Center will also ensure that there are full consultations with interested law enforcement agencies at each step of a developing incident in order that those agencies may properly carry out their law enforcement responsibilities.

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-- The Department of State Operations Center is charged with the timely transmittal to the relevant Departments and Agencies of directives received from the White House.

-- Where it is decided to take an action or to refrain from an action based primarily on considerations of foreign policy, the Department of State will coordinate with other interested Departments and Agencies in developing public statements regarding the actions or inaction of the United States Government and in transmitting appropriate press guidance to Agencies requesting it. When requested by the relevant law enforcement authorities, every effort will be made by the Department of State to transmit to them appropriate press guidance on such incidents at the same time that a government decision is made.

Each Department or Agency in receipt of this Directive shall cooperate fully with the Department of State in the discharge of its responsibilities under this Directive. The Department of State, for its part, will take appropriate steps to ensure that it carries out its responsibilities under this Directive as expeditiously as possible, particularly in meeting the concerns of those Agencies charged with law enforcement.

Nothing in this Directive is intended to alter or restrict the statutory or other existing authority of any Department or Agency for the enforcement of the laws of the United States.

NSDM 207 is hereby rescinded.

Zbigniew Brzezinski

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APR - 2 1987

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Houston
Washington, D.C.
Austin
San Antonio
Dallas
London
Zurich

April 1, 1987

Mr. Paul Lamberth
Project Director
Helsinki Commission
237 House Annex 2
Washington, D.C. 20515

Dear Paul:

In response to your request for testimony from Admiral Poindexter, I must respectfully decline on his behalf at this time. As you know, he has declined on a number of occasions to testify before Congress on other matters and I feel it would not be appropriate for him to appear before your commission.

Very truly yours,

Richard W. Beckler

Richard W. Beckler
For the Firm

RWB/jml

CARGILL GRAIN ELEVATOR

PHOTO BY CSCE STAFF

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COAST GUARD

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AFFIDAVIT

I, R. Travis Douglas, hereby state and affirm as follows:

1. I am the attorney of record for Ernest M. Spurlock (hereinafter Spurlock) and Joseph Bashaw in the matter of agency diciplinary action against them arising out of the return of Miroslav Medvid (hereinafter Medvid) to his ship on October 24-25, 1985, in New Orleans, LA.

2. During the course of this case I came into contact with Mr. John Barron (hereinafter Barron) of the Reader's Digest. Barron operated out of the Washington, D. C. office of Reader's Digest.

3. Barron at several times informed me that he had interviewed Joseph Wyman (hereinafter Wyman) who allegedly was the first person Medvid made contact with in Belle Chase, LA when he jumped ship. I had the impression that Barron was maintaining an ongoing dialog with Wyman and each time new allegations were made by Wyman against Spurlock, Barron would call me to relate the allegations and solicit comments from me.

4. According to Barron, Wyman alleged that he had been in personal contact with Spurlock on several occasions to discuss the Medvid case.

5. In a telephone conversation on March 20, 1986, Barron stated that Wyman had allegedly met with Spurlock on the evening of March 19, 1986 at a bar located at the corner of Canal Boulevard and St. Louis Street. The meeting allegedly occurred from 9:33 a.m. until after midnight. Barron related that Wyman stated that Spurlock had several drinks and began to talk about the Medvid case. Spurlock allegedly stated that he knew that the person whom the State Department took off the Marshall Konev and interrogated at the Naval Air Station in Algiers, LA was not Medvid. Also, Spurlock allegedly stated that he was going to blow the matter open by going to the press with the story if the Immigration Service continued with its disciplinary proceedings against him.

6. I listened to Barron's statements about the alleged meeting and then told Barron that Wyman was a liar; that Spurlock had been with me from approximately 6:00 p.m. until around midnight the night of March 19, 1986;

and, that Canal Boulevard and St. Louis Street did not intersect. I further informed Barron that Spurlock had been subjected to a lie dector test on March 12, 1986 regarding the Medvid incedent and had passed that test. I invited Wyman to take the same test with respect to his involvement in the Medvid matter and offered to pay the expense for said test. Barron had previously challenged me to have Spurlock submit to a lie detector test and I had offered to do so if Wyman would also agree to be tested by the same examiner. Wyman had declined.

7. Following the above conversation with Barron, I did not hear from him regarding the Medvid case. I talked to him by phone in July, 1986 to inquire why the article on Medvid had not appeared in the Reader's Digest in June as scheduled. He said that the article had been scrapped by his New York editor.

Under the penalty of purjury, I hereby state and affirm that the above is true and correct to the best of my knowledge and belief.

R Travis Douglas
R. Travis Douglas

January 24, 1987
Dated

The
MITCHELL
Agency

4902 Canal Street, Suite 305
P.O. Box 74084
Metairie, LA 70033
(504) 482-9881

Licensed in
Louisiana
Mississippi
Texas

March 21, 1986

Mr. R. Travis Douglas
Attorney at Law
1919 Veterans Boulevard
Suite 201
Kenner, Louisiana 70062

Dear Mr. Douglas:

In compliance with your request a Specific polygraph examination was administered to your client, one Mr. Ernest M. Spurlock on March 12, 1986. As you know, the purpose of said examination was in an attempt to either verify or refute his denials of being involved in an alleged conspiracy concerning the deportation of a Russian named Miroslav Medvid.

During the course of his pre-test interview your client stated that he was made aware of Mr. Medvid having "jumped ship" and was being held as a detainee on October 24, 2985. Agent Spurlock and his partner Joseph Beshaw were contacted and subsequently interviewed the Russian alien commencing at about 9:00 p.m. that same evening. Because of the language barrier (Mr. Medvid spoke no English and the two agents involved spoke no Russian) a long distance telephone call was made to New York and from a list of available interpreters one Ms. Irene Paddock was contacted and asked to act as interpreter via long distance telephone between Agent Spurlock and the Russian alien.

According to Agent Spurlock he asked the interpreter on at least three or four occasions during that conversation whether or not the Russian alien was seeking political asylum in the United States and also asked for a reason for his having left the Russian freighter. According to Agent Spurlock the interpreter stated nothing definite in so far as his reasons for jumping ship and at no time during the conversation did the interpreter state that the alien was in fact requesting political asylum. Agent Spurlock went on to say that he consulted with no one either within or outside of his department other than his partner at that time Agent Beshaw. He stated that it was standard operational procedure to return such aliens to the ship under these circumstances unless valid reasons could be determined to do otherwise. Since this particular situation warranted no other type action being taken, the agents ordered the alien returned to his ship.

The following relevant questions were formulated, reviewed with Agent Spurlock and then posed while under instrumentation;

3. Regarding the incident involving the alien we discussed, do you intend to answer all of my questions truthfully?
5. Last October 24th did the interpreter tell you that the alien had requested political asylum?
7. Were you instructed by anyone to return the alien we discussed to his ship?
10. Other than your partner, prior to ordering the alien to be returned to the ship, did you consult with anyone?

The examination was administered utilizing the Reviewed Control Question Technique with a total of three separate polygrams being produced. A careful analysis of the charts indicate no significant physiological responses to the relevant questions utilized. It is therefore the opinion of this examiner that Mr. Spurlock has been completely truthful in his verbal responses to the relevant questions posed during the examination.

If I may be of any further assistance, please do not hesitate to contact me.

Sincerely,

J. Mitchell, CPE
President

IN THE MATTER OF:
MIROSLAV MEDVID

Deposition of JOSEPH H. WYMAN taken at the offices of the Plaquemines Parish Sheriff's Department, Belle Chasse Lockup, Belle Chasse, Louisiana, before Leah J. Glass, Certified Shorthand Reporter in and for the State of Louisiana, on Thursday, the 29th day of January, 1987.

APPEARANCES:

BARBARA JEANNE CART
Staff Counsel
Congress of the United States
Commission on Security and Cooperation
in Europe
(Helsinki Commission)
237 House Annex 2
Washington, D.C. 20515

ALSO PRESENT:
FRANK HEATH - INVESTIGATION

REPORTED BY:
Leah J. Glass
Certified Shorthand Reporter

EXAMINATION INDEX

JOSEPH H. WYMAN

Examination by Miss Cart Page 3

EXHIBIT INDEX

Wyman #1	Section of law which created the Commission on Security and Cooperation in Europe	Page 3
Wyman #2	Senate Resolution 353 of the Ninety-Ninth Congress	Page 3
Wyman #3	Handwritten Statement	Page 4
Wyman #4	INS Statement	Page 4
Wyman #5	Statement given to Orest Jejna	Page 4
Wyman #6	Court Testimony	Page 5
Wyman #7	**BROWN JAR (not attached)**	Page 6
Wyman #8	Photocopy of Envelope	Page 6
Wyman #9	Photographs	Page 7
Wyman #10	Photographs	Page 7
Wyman #11	Photographs	Page 10
Wyman #12	Photographs	Page 31
Wyman #13	Photographs	Page 31
Wyman #14	Photographs	Page 31
Wyman #15	Photographs	Page 32
Wyman #16	Photographs	Page 60

JOSEPH H. WYMAN,

717 Belle Chasse Highway, S., Belle Chasse, Louisiana 70137, after having been first duly sworn by the Reporter testified as follows:

EXAMINATION BY MISS CART:

Q Mr. Wyman, we have previously explained the purpose of our investigation but for the record I want to insert as Exhibits the section of law which created the Commission on Security and Cooperation in Europe as Wyman No. 1, as well as Senate Resolution 353 of the Ninety-Ninth Congress which is the mandate for the investigation as Wyman No. 2. And the amendment which is noted in the Congressional record of May 14, 1986.

Mr. Wyman, it is my understanding that you have previously given several statements under oath. I would like you to take a look at these and tell me if you recognize them.

A Is it all right if I read all the way through it?

Q Yes.

A That is my handwriting.

Q Is that the statement that you gave to the INS investigators?

A Yes, I believe it is, yes.

Q And is that to the best of your recollection an accurate reproduction of the statements?

A Yes, it is.

Q And do you recollect this statement, this is Exhibit No., the INS statement is Exhibit No. 4.

A Yes.

Q Does that appear to be an accurate reproduction of the statement that you gave to Orest, O-R-E-S-T, Jejna, J-E-J-N-A?

A Yeah.

Q We will mark that exhibit as Exhibit-5.
And if you will please look at the document and tell me if that is an accurate reproduction of your testimony in court in the case as it appeared before Judge Feldman?

A Too bad I am under oath.

MISS CART:
Let's go off the record.

(Discussion held off the record.)

BY MISS CART:

Q Let's go back on the record.
Does this appear to be an accurate --

A Yes, this appears to be an accurate thing, yes.

Q Of your testimony?

A Yes, it does, yeah.

Q In the beginning of your testimony you described your occupation and you note your place of residence, has any of that changed?

A It is all the same, 717 Belle Chasse Highway, South, yeah.

Q Then let's mark this Exhibit No. 6 and for the sake of time I will not cover the same territory that was covered in the court hearing.

I would like to proceed to some other pieces of evidence and let you identify them. The first one, let me hand it to you, it is a brown glass jar.

A Yeah.

Q Do you recognize that jar?

A Yes, I do.

Q Where have you seen the jar before?

A Miro Medvid had it, that is the jar he was carrying the night we ran into him. Now I did not see the jar that night, I saw it the next day. My nephew Wayne, he had left this in the car.

Q Did you see the jar in Medvid's hand?

A I really never noticed, it was dark, and I was more concentrating on his face, okay? But the next day, though, Wayne had said yeah, he had left this in the car.

Q And do you know what subsequently happened to the jar, who did you give the jar to, anyone?

A Yeah, I gave the jar and also another piece of evidence, an envelope, to a man.

Q With the INS?

A Immigration Service, right.

Q Is this the envelope that you gave to him?

A Yes, it is.

Q If we can mark this as No. 7. Let's go off the record.

(Discussion held off the record.)

BY MISS CART:

Q You want to take a look and make sure that that is an accurate photocopy of the envelope?

A Yes.

Q We will mark that as No. 8.

Mr. Wyman, I would like you to look at a photograph and if you will identify if you can, identify the man in the photograph for me, please, sir.

A This is the man known as Miroslav Medvid. I identified this same photograph for a gentleman from the Senate Agricultural Commission the day the ship left New Orleans.

Q Was that Terry Wear, W-E-A-R?

A Terry Wear, right. He had the photograph. Of course, it was black and white, it was not color.

Q That is the man that you saw on October 24, 1985?

A That is the man, yes, I know as Miroslav Medvid, the same man that I first saw in the parking lot, right.

Q I would like to show you a few other photographs and ask if you have seen any of these photographs before. There are fourteen pages numbered on the back one through fourteen. Do you recognize any of these photographs?

A Yes. Okay, these are all except for this one here, is Jim Geltz's.

Q And who is Jim Geltz?

A Jim, he was the lieutenant, was a lieutenant in the U. S. Navy and was stationed in Algiers, Louisiana, when they did the interview with supposedly Medvid over there..

Q Wait, he was taken off of the boat and interviewed at the BOQ?

A Right, in Algiers, right.

Q When was the first time you saw these photographs or any of these photographs?

A I have seen only one photograph in the original beginning.

Q Do you recall which one of these photographs it was? If it was one of these?

A I would have to say this photograph right here. Correction, this is the photograph right here. This appears to be the original photograph I seen.

Q It is the photograph marked three?

A I am pretty sure that is the one there.

Q This is a large blowup marked No. 7, do you recall which --

A All right, the one I seen was an eight by ten like this.

Q The one marked No. 7?

A Yes, it was an eight by ten. Yeah, that is the one I originally seen that Lieutenant Geltz had with him.

Q Could you explain the circumstances of how you came to see this photograph and about when in time that was?

A Okay, let me refresh my memory a little bit.
The day I went to court this was around a Tuesday, I want to say, this was about Tuesday, I think. I think it was before I went to Court, I think.

Q Would have been November the 6th?

A What day would be November --

Q Wednesday.

A Wednesday, okay, it was a week after the interview, it was a Monday night, I remember now it was right after the interview was done after I testified in Court and everything. In fact, this was --

Q Here is a calendar, if that would help refresh your memory.

A The ship had already sailed. Yeah, I am pretty sure the ship had already sailed. I have it wrote down in my house, okay? I cannot actually give you a date right now, but I am pretty sure my memory serves right because this was almost a year and a half ago now. The ship had already sailed.

Q And it was after your appearance in Court on November 6th?

A Yes, definitely.

Q What happened at that time?

A Okay, anyway, I get a call from a gentleman who identified -- I do not remember the name he used, he did not identify himself as Lieutenant Geltz. And he said he had a picture.

Q If I can interrupt you, I believe in an interview with staff you mentioned the name Robinson?

A Something like that, yeah, Robinson, yeah. I think that was the name he gave me. And then he went, he said I have a photograph I took at the base of supposedly Miroslav Medvid and I would like you to see the photograph to see if this really was Medvid.

Q Was there something that had happened that had prompted him to call you, that you are aware of?

A Yeah, with all the controversy swirling around the thing at that time he was just very curious himself, what he told me himself that night, he was curious to find out if this was the real Medvid.

Q At that time, had the photographs appeared in The Times-Picayune?

A No, the INS had not appeared. Yeah, the Matt Rose photographs of the gangplank scene you are talking about. Because I testified to that in court about the --

Q If we can pause here for a second.

(Discussion held off the record.)

BY MISS CART:

Q If we could pause here for a second, let me show you two other photographs and see if you can identify these two photographs marked as Exhibit No. 11.

A Okay, this one here, what is this number here on this one here.

Q That does not have anything.

A Okay, this photograph --

Q Let's call this one number one.

A Okay, Matt Rose number one and Matt Rose number two.

Q Matt Rose number one shows a full face photograph of the man known as Miroslav Medvid?

A Okay.

Q And photograph number two shows a profile shot of the same individual?

A Okay, in number two photograph was the one that appeared in The Times-Picayune. And I had called when I had seen this published in The Times-Picayune because they had it portrayed at the man at the far right being Medvid was the caption. And I called INS right away, that McMahon left a number there and told him I said -- wait a minute, first of all, when I got on the phone the lady answered, she said who I was and I told her who I was. And a man came on the phone who did not identify himself. I asked to speak to Mr. McMahon. He said Mr. McMahon is not available, what can he help you with? What can I help you with? And I said well, I told him who I was, I said the man you-all are showing in the photograph, not you-all, but The Times-Picayune in the photograph is saying is Medvid in the picture is not Medvid. Right away he came back, oh, yes, we know that is not Medvid, that is the Soviet ship doctor. And I said also on that paper, I mean on that photograph to me, I do not see anybody on there that resembled Medvid. He said rest assured we have shown all the witnesses involved in this case pictures of Medvid and we have the right guy, right away he come back like that. I said well, you have not showed the picture to me and my nephew and we are two witnesses in the case also.

Q At this point no one had shown you a picture of Medvid at all?

A No.

Q The photographs that we have identified as Exhibit No. 9 at that point, had you ever seen that photograph before?

A No, no, not at that point. So then the guy says, and that was his parting shot, he said rest assured, Mr. Wyman, we have shown this picture to each and every one concerned that needs to be known and, you know, we have the right man. He is the one insinuating, I have not even said at this time anywhere that this was not the right man because I did not know. I mean I cannot tell by this photograph, you know. I mean, you got a profile shot here. So this is, you know, this was asked to me in court.

Q And this happened --

A This happened midway the week, in other words, he was taken to the thing, what, Monday or Tuesday he was taken to Algiers.

Q To the BOQ on Monday?

A Yeah. This photograph was taken and he was leaving going down to go to that, but it did not appear in the paper until Wednesday. Now they done brought him back to the ship already by then.

Q They had taken him back to the ship on Tuesday?

A Right, this was published the next day on Wednesday. And I had went to court the week after that, on Wednesday, November the 6th. And if you want to go through the testimony there you can see how the judge, the judge, not the prosecution, the judge, brow beat me on this subject to make sure that I would say that, you know, this was not, I mean, this was Medvid, I could not identify it from this photograph.

Q So this is the controversy that you are talking about?

A Yeah, it happened in the courtroom, the controversy.

Q Over the identity of the --

A Of the man in the photograph. Like I told the judge, I was just going by The Times-Picayune caption that the man at far right is not Miroslav Medvid, not the man I know as Miroslav Medvid. He said could anybody in there be Miroslav Medvid? I said the only possible man can be is the man with his head turned because I cannot see a frontal view of him in a picture which was not blown up this good, by the way.

Q The one that appeared in the newspaper?

A But you could still tell that this man was not because he had a full beard.

Q So the man identified in the newspaper was not Medvid?

A Right. But I could not tell the other three men.

Q After you appeared in court then you received a telephone call from a man who identified himself as Robinson or some other name?

A This would be after, this is even after the ship had sailed.

Q And after the ship had sailed?

A After the ship had sailed. In other words, yeah, he called me and identified himself as Robinson, Mr. Robinson. He had a photograph that he took on the base of the man that was supposed to be Medvid and he wanted to show it to me to see if it really was Medvid with all this controversy swirling around. So we agreed to meet.

Q Where did you meet?

A We met at Naquin's Restaurant in Belle Chasse, Louisiana.

Q Was anyone present?

A My nephew, Wayne, was with me.

Q Wayne Wyman?

A Wayne Wyman, right.

Q What happened at that meeting, do you recall what time of day it was or --

A Approximately -- it was at night.

Q Do you recall approximately the time?

A It was around 7:00, 7:30 at night.

Q And it was sometime the beginning of the next week after?

A Yes, it was like a Monday or Tuesday, if my memory serves right.

Q After November 6th?

A Right. The ship sailed that Saturday, Sunday went by, I think it was Monday to say Monday evening, Monday night.

Q What happened at that meeting?

A At the meeting we were there waiting and the gentleman came in and I noticed right away that he was definitely a military type guy by his dress, by his short haircut, by his military type shoes, you know, spit shined, the whole bit. So I knew he was a military man. So he sat down, he identified himself as Mr. Robinson and we began to talk and all like that.

Q Now, you had never met this gentleman before?

A No, never met the gentleman before in my life, not before that time. So we talked and kind of got acquainted. I said all right, now, look, what is this all about? I said I know you are in the military, I can tell by the way you are dressed. Well, that caught him offguard. He said well, I am in the military and he said I took this picture and he, I want to see if you recognize this guy in the picture. And he showed me a picture --

Q The one marked No. 7?

A Yes.

Q And it was also a black and white print?

A Right, black and white print, right. And he says -- I think I asked him well, which one of these guys is supposed to be Medvid? I am just testing him out to see if he knows what he is talking about. He says the guy in the center is supposed to be Medvid. So I looked at it for a while and I let my nephew look at it for a while, Wayne, for a while, and I says now, who are you before I give you any answers on this? And then he finally told me that he was Lieutenant Jim Geltz and that he was the public affairs officer, I think it is he was at the time at the base and that him and another man took these pictures.

Q Did he identify the other man?

A He did later on. I do not remember the man's name. I do not remember, I never did meet that man anyway. So I let Wayne look at it and I said now, Wayne, the only way to do this properly is I says count to three, either say yes it is or no it is not. And we counted to three and we both said no. I said what tells you no about it. He said well, the guy is too short, the guy is not heavy enough and he says, you know --

Q This is what Wayne was saying?

A Wayne said, he said it don't look like him at all. He says I was with the guy over an hour and a half, you know, in the car, and he said that guy in the car was a lot bigger guy than this guy.

Q What about you, what did you say?

A I said no right away because of numerous things I picked out wrong. First of all, the guy's weight is so far -- this man is about thirty-five or forty pounds lighter. First of all, the man is not tall enough. The man I knew as Medvid, and I gave from Day One a description of the man was either five ten, five eleven, about one hundred seventy four or one hundred and seventy five pounds, okay, and INS even finally come up and said the height was five foot ten and one hundred and seventy four pounds. So I did not miss his height and weight by no means. And everybody in this picture, this guy over here appears to me by looking at the size of the car, this man appears to be about a man about five eleven.

Q This is the man appearing on the far left?

A It appears to be a man to be about five ten, five eleven, average height.

Did you-all know how high this man was?

Q I am not really in a position to answer that right now.

A Well, I am not going to answer no more questions right now. You know, this is not a child's game. If the man is five foot ten, five foot eleven, right, I can take a photograph and I have photographs of this, by the way.

Q I honestly do not know how tall he is.

A I can take a Cadillac and measure the Cadillac and tell you how high this man is in a matter of minutes, you know, because cars do not exaggerate height. I am an ex-policeman and I know how to do this, too, I went to LSU for this. So, I mean, if we are going to play games, I am going to stop the interview right now.

Q I am not playing games with you, Mr. Wyman, I do not know how tall the man is.

A But he appeared to be five foot ten and I am willing to bet money he is five ten or five eleven.

Q That is the man on the far left?

A Right.

Q And the man in the center appears to be several inches shorter?

A He appears to be five six, maybe five seven. Because he is the shortest guy in this photograph. And by the way, he is appearing to me to be the man closest to the camera in the photographs, follow what I am getting at now?

Q Right.

A What that means is also if you know anything about photography the object closest to you in the camera is going to be the tallest object in the photograph. Now you can check that out with the FBI, NAACP, whoever you want to check that out with, but that is the fact. And this man is closest to the camera, he is also not the tallest object in the photograph. So, in other words, if you had three men that were say six foot tall and you brought them and lined them up almost in a row at different heights, the guy that is closest to you is going to look like he is two or three inches taller than the rest of them.

Q Because of the distortion?

A Because of the distortion of the camera lens. So this man is closest to the camera but yet he is still not compensated for the height.

Q Are there any other reasons why you believe it is a different person than the man you saw?

A All right, well, I did not mean to get mad at you. When you are asking me a question, I am answering you honestly and I expect a honest response back.

Q You have to understand I am not in a position to answer questions right now.

A I understand that, I understand that.

Okay, number one, this guy here appears to be a much older man. The man I knew as Miroslav Medvid also was a man about 23, 24 years old, you know, that is what he appeared to be to me. And he also had blond, dirty blond hair, a fair complexion. And this guy here has, seems to be black or dark colored hair, real bushy hair, real bushy eyebrows, a much larger nose, and he does not appear to have a mustache. Now the guy identified as Medvid, if you can see in this photograph here has a mustache on him.

Q This is the --

A The INS photo.

Q The blowup marked No. 8?

A You know, being a young man, I am just giving an observation, being a young man like this man is, he does not have a big thick bushy beard. So in other words, he does not shave that much is what I am getting at. For him to grow that mustache would take him three to four months. Why on God's earth would this man shave that mustache off in

about a two or three-day period? Beats me, okay?
Also, this man -- getting to the end of the question, I think I have met this man, okay? I cannot tell for sure because I did not pay much attention to him. But they had three men came looking for this boy here after my nephew, Wayne, took him to New Orleans. And I believe this guy was the guy that was -- he was a small short guy, spoke English quite well. You know, came with two other guys. The other two guys were six footers, you know.

MR. HEATH:

Could we explore before you get off that, your observations that night with the two other people?

THE WITNESS:

Okay, in other words, you got to back up to what happened that night. We met, you know, from the beginning, I am not going to go over the whole thing, but my nephew, Wayne, had agreed to take him to New Orleans. I think you have that already down.

BY MISS CART:

Q Yes, that is in the other statements.

A The man was extremely nervous. Now we got to go back to many things. Okay, I tried to communicate with this man a lot, okay? And I mean I have talked to eastern European people before like Polish salesmen when I was in the Sheriff's Department we had to deal with them. So you try to find a common ground, you know. Did he know any English? No, he did not. He -- if the man was so scared that he could say anything yes or no or okay, maybe, or anything, he would have said it. Because he was really trying to communicate. And the only language I could understand he was speaking, you know, was a foreign language, you know, that sounded, you know did not sound even Polish, it did not sound Polish. So I have heard Russian a couple of times before so I did not know if it was Russion if that is the answer you want. But he never answered any affirmative things like, you know, when I asked him, I said, I figured he was a Russian. I said you are Russian? And he would beat on his chest and he said Ukrainian. He did not say no, I am not a Russian, I am Ukrainian, he just shook his head and beat on his chest and said Ukrainian. And he did not -- there is a lot of time I tried to communicate with him and just common things, you know, how can I say that makes it sound right? When I mentioned, I said New Orleans, I said you, pointed to him, put my finger on his chest, you New Orleans, and he would not say yes, you know, like that, he just nodded yes affirmative. But he could not say yes like the word or okay or anything like that. He never spoke one word of English, okay? And if the man was so scared at that time, if he could have spoken English he would have spoke it because he kept looking back where he came from.

Q So he seemed to be apprehensive?

A Yeah, and like something was after him, okay? And that is the impression I got. So when I -- Wayne said he will take him to New Orleans which I regret to this day, Okay? It is hindsight. Wayne got in the car and he said Uncle Joe, I am going. The man was confused, he did not know what was going on. I then opened the door to Wayne's car and told him to get in there and he understood that when I pointed to him and pointed to get in the car. And he almost jumped in Wayne's lap to get in the car he was so glad to get in there, closed the door. They pulled out the parking lot, they are going up the highway. As they are going up the highway, that is when I noticed across the street coming up the sidewalk they got a big street light there, there was three men there.

Q Wayne and Medvid were headed North on Belle Chasse Highway?

A Right, going to New Orleans.

Q And you are looking at the direction of South?

A Yeah. In other words, I watched them pull out of the parking lot which is actually a little south to where my building is, okay? And I watched them pull out because that is why I noticed the three men because they are now directly in -- being a jeweler owning my own business, a jeweler, you are very self-conscious about security. So naturally I am always scanning the parking lot especially at night when I am out for security reasons. And, by the way, I was armed that night. And so these three men, I noticed they were across the street. So I turned around, I make sure the alarm is on to the shop because Wayne had locked it up. The door was secure and everything. When I turned around now they are in the parking lot. They had crossed the highway and they were in the parking lot. So I noticed they were walking towards me. And as they walked towards me, I kind of moved over to the vet's shop right nextdoor to me, the veterinarian clinic, because they have got a big light out there. Because I wanted more light. Two of the men stopped about midway in the parking lot, there was two taller men and a little short guy came over there and we talked. And he talked perfect English. And when I say perfect English, just as good as you and I except he did not have a southern drawl.

Q I want to interrupt you there, too, and ask you to clarify something, if you will. Read the first sentence point fifteen on Exhibit No. 5, if you will read that, please.

A There at the very top?

Q It is a continuation of point fifteen.

A I think something is missing here. One of the men asked me if I had a --

Q What I am looking at here is two of the men were tall and large, muscular, and the other one was of average height and weight.

A Yeah.

Q So by average, what do you consider average height?

A Two men were tall. When I say tall, to me a person tall is over six foot, okay?

Q And so an average height would be about --

A Five six, five seven, that is an average height person, that is what was taught to me. Anything over six foot tall, when I went to school in the police academy was anything over six foot was considered tall. An average person's height either male or female would be five six, five seven.

Q That was just for clarification.

A All right.

Q Just for clarification, okay. So the three men that you saw there in the parking lot, you spoke with the shorter one?

A Shorter one of, right, he spoke good English, did not have no accent or nothing.

Q Do you recall what the other two looked like, anything about their appearance?

A They all had short hair, okay? And the other two, I did not get a real good look at.

Q Did any of them have any facial hair?

A One had a beard, I know one had a beard.

Q Do you recall were they light skinned, dark skinned?

A I could not tell. They was in the dark at the time, it is late at night, it is like 8:00, 8:30.

Q Anything about their clothing that was out of the ordinary?

A No, they was dressed in what I would call civilian appearance, pants, shirt, no coat on, anything like that. It was a warm night that night, by the way. This guy here, he had -- I am referring to this guy here because this is the guy I believe I talked to.

Q You are pointing to --

A The guy that is supposed to be Medvid.

Q In photograph number seven?

A This guy, yeah, this guy was really easy to recognize.

Q But you are also talking about the shorter of the three men?

A Yeah. This is the guy who spoke the English. This man appeared to be thirty-fiveish, thirty-three, thirty-five years old, ruddy complexion, okay, thick eyebrows. Anyway, he had a bright orange shirt on, you could not miss, okay? And that is how I noticed him right away.

But anyway, we spoke and he asked if I had seen anybody wandering around. And I asked him why. He said, "One of our comrades fell off the ship and may have injured himself and may be walking around, wandering around, and we are looking for him." And that is when I started finding two and two was four in my mind. I said wait a minute, these guys are looking for this other guy that just left. That is when I said in my own best interest I had better say no, I had not seen anybody.

Q Did you ever see any of these three men again?

A Yes, I did see one of the tall men.

Q Where was that and when was that?

A That was when we went with the Agricultural Commission to --

Q Is this the Senate Agricultural Committee?

A Committee, yeah, I am sorry. Terrence Wear, Jack Sullivan.

Q David Sullivan?

A We went to Reserve, Louisiana, where the ship was moved from Belle Chasse up to Reserve where he was going to load the grain. I went up there twice, I went up there a Thursday night and they went on board the ship to try to serve the subpoena. And the captain told them that come back later. And to make a long story short, we went back the next day and we were standing along the dock, they have got Soviet crewmembers all along the ship. And we went, when we first got there, they have two uniformed Soviet officers at the end of the gangplank preventing anybody from going aboard the ship. That is when this Russian diplomat came down, a big tall man about six five, six six.

MR. HEATH:

Had you ever seen him before?

THE WITNESS:

No, he was from Washington from what I can understand.

BY MISS CART:

Q At this point, Mr. Wyman, would you take a look at these, these are photocopies of photographs which appeared in the newspaper. Do you recognize any of the people in any of these photographs?

A Yeah. Well, I know this big tall dude here.

Q Is he --

A The Soviet diplomat here, that is the big man about six five, that is the MARSHAL KONEV over there. I do not recognize this guy. It is hard to tell in this photograph.

Q In the subject title, this is the man that is identified as the Soviet diplomat?

A Yeah, yeah. I remember him, he spoke a broken but a good enough English you could understand him. He did not speak a perfect English.

Q Do you recognize -- this is Exhibit 12.

A These are terrible photographs, though.

Q They are very poor quality.

A It is hard to tell in these photographs here, it really is. Now you may have checked back with some of the news reporters who took a lot of photographs. Now during the time we was there you have a Soviet officer, you had a picture of the gangplank scene there on the MARSHAL KONEV docked, I do not know if you have a photograph of that at Reserve. No, that is not going to be that either. It is docked right up against the dock. I mean, I can reach out and touch the ship, that is how close I am now.

Q For the sake of clarification, let's run through these other photographs real quick and give them an introduction into evidence.

A If you have a better photograph of that I would like to see that there.

Q I am trying to get one now, I have not been able to obtain one so far.

I would like you to take a look at these photographs, there are nine photographs, and tell me if you recognize any of those photographs.

A Well, this first photograph appears to be the

MARSHAL KONEV. Same thing on number two.

Q Do you recognize any of the gentlemen in the photograph marked number three or number four?

A No. Who were they supposed to be?

Q I would like you to take one look at this photograph that we will mark Exhibit 15. Do you recognize anyone in that photograph?

A No.

Q All right. When you were at Reserve --

A The MARSHAL KONEV was sitting at Reserve at the grain elevator in this position docked against the dock.

Q Lengthwise against the dock?

A Lengthwise against the dock with the forward part of the ship pointed north. Okay, where the smokestack is for clarification pointed south in the back of the ship.

Q That was --

A It was right up against the dock. In fact, you could walk, they have a gangplank at the rear by the smokestack and I am just looking at that for identification.

Q For identification purposes then we are referring to photograph number eight of Exhibit No. 14, although this photograph was not taken at the cargo grain elevator?

A Right. Now that gangplank --

Q It can be seen from this photograph?

A Yeah, was lowered on to the dock at Reserve. Okay, so in other words, that is how it tied up to the ship. Actually, you could stand on the dock and reach across about two and a half, three feet, and touch the ship. So the ship was against the dock like that.

Q So when you were --

A At Reserve.

Q Yes, you were there on the dock?

A On the dock. In fact, I was right up there where the Soviet diplomat, when he came down, I was standing right there with the police officer and Wear and Sullivan.

Q This is the Soviet diplomat identified in Exhibit No. 12?

A Right, the big tall fellow, six foot five guy. They had two Soviet uniformed officers from the ship there. When we came there, they went up and brought down the Soviet diplomat. He said we cannot go on board ship. They wanted to go into negotiations so Sullivan and Wear and the Soviet diplomat went back in the cars and went back across the levee into the office of the grain elevator. We stayed out there for hours.

Now while I was out there, the Soviet crewmen were coming and going and sitting and standing on the rail. I noticed they had women on board the ship, too, it was not just a man crew. And as we was out there, one of the Soviet officers went back up on board the ship. Then while we were there an hour or so later, a man came, comes down the gangplank in blue jeans and a shirt with a beard. And I recognized him as being one of the men that came that night looking for Medvid. He took the place of the Soviet officer who then went up into the ship and never came back down. And he stood guard out there at the gankplank.

Q Did he ever see you, notice you?

A He noticed me, in fact, he kind of unnerved me a little bit because I could not tell who was taking pictures of me up there at the time. But they took several pictures of me. In fact, I walked away and went down and they purposefully followed me down and they took pictures of me. They sort of unnerved me a little bit.

Q Did you see either of the other two men at the time?

A I really did not see the other two men. I saw him for sure I can remember. My memory -- you are talking about a year and something.

Q This is the shorter --

A No, I do not remember if I seen him or not. I will be honest with you, it was almost a year and a half ago. At the time I might have said I might have noticed him. But right now my memory I recall seeing him definitely because like I say, if you look at the photographs that these guys were constantly taking, you can probably pick him up because he is standing at the end of the gangplank in blue jeans and like a plaid shirt.

Q And he had a beard?

A He had a short beard.

Q If we can go back a minute to your meeting with Lieutenant Geltz that evening, did you recognize the man in the photograph?

A The man in the photograph, I told Jim, I said I think I have seen this man before.

Q And did you tell him where you thought you had seen him?

A Yes. And I asked Jim to kind of describe this guy after I done said no, this is not Medvid, as far as I am concerned, this is not Medvid. I said Jim, could you describe this guy a little bit to me? He said well, he was a small little runt, that is how he put it. He had a sort of an olive skin complexion, dark skin complexion. And he said, you know, that he was not -- I said, you know, any particular thing about him? He said no, that he was just short and he was not very heavy, about one hundred and fifty pounds or so, maybe one hundred and forty, you know. He did not know exactly, but he was a very small individual compared to everybody else out there. And he met several of these guys in these photographs, okay? And I asked him then, I said well, Jim, how tall was this guy? He said well -- Jim stands about six foot and he is just a tad shorter than me. That is why I said I knew how tall this guy was, but later, you know, later I found out. He said no, he kind of had a olive skin complexion and kind of a ruddy complexion and he had black hair.

Q How did you leave your meeting that evening?

A Well, we talked about it and he says, you know, it kind of floored him that we said that was not Medvid, okay? So he was caught in a Catch 22 situation. He said I need to tell somebody this. I said well, you can go to your captain of your base out there or whatever it is, your, you know, commanding officer. He said no, I do not think that would be a good idea. I said I have contact with these people I met from Washington, you know, I had their phone numbers and everything. Well, he said we will make the call and talk to them and see and tell them what you found out. So I called up Lucier, Jim Lucier, and told him what happened. And then --

Q Jim Lucier is with Senator Helms' staff?

A Right. Then they wanted to make, try to make an arrangement. They did not want something to happen to that photograph, okay? So that is when the next night James came over to the house and, you know, I arranged for them to talk on the phone. I said look, it is up to you, you-all get together on this and, of course, poor Jim got in a world of trouble over this.

Q For taking the photograph?

A For taking the photographs which was his job, by the way.

Q Did you ever have any further contact with Lieutenant Geltz?

A Oh, yeah, we have talked on and off about this thing since it happened, since after it happened. But he got in a world of trouble like I said. The Navy slammed him hard. And then I told him not to worry, I said before you get out, before you get out the Navy I guarantee they are going to drop all those charges against you. I says -- his wife got in trouble. I said do not worry, I am telling you just take your time and wait. You can ask him that for a fact. I said they are going to ask you, sour grapes as the saying goes. And that is what they did.

Q Did he show you any of the other photographs that had been taken that day?

A No, not at that time. We are referring back to when we had first met? No. He only had the one eight by ten.

Q When did you see or did you see --

A Yeah, I seen his other ones from various different sources of the other photographs. In fact, there is several people have copies of these photographs, several, several.

Q When did you first see the Matt Rose photographs that are marked as Exhibit 11?

A Okay, Matt Rose, which one is --

Q The glossy prints, I am talking about.

A Which one is one?

Q This one.

A This one here, the frontal shot? Orest Baranyk.

Q Baranyk?

A Okay, he had arranged for Matt Rose because --

Q Who is Orest?

A Orest and I talked, I said Orest, you know, they published that photograph there, there is going to be other photographs of the man. I said if they are published, that photograph there, there has got to be maybe a frontal shot. We talked on the phone.

Q Mr. Wyman, the -- can I backtrack a moment? How did you first meet?

A I met Orest at the Courtroom, after the Courtroom was over.

Q This is when you appeared in Court on November 6th?

A Right.

Q What is your understanding of his involvement in the case?

A He was a member of the Ukrainian American Society. And he was quite involved in the case and all like that. In fact, the attorney that was Kulas, okay, and him was personal friends.

Q So he was an interested --

A Involved in the case, yes, he was interested in the case.

But anyway, we talked and he says -- we got to talking, I said somebody ought to check it out and see what other photographs Matt Rose has. I said The Times-Picayune has, you know, concerning this photograph because they had taken one click, click, click, click, click, click to shoot the whole roll out just about. So he did, he had a frontal view. And see, the reason why the Government has been given misinformation on this all this time, you go back when you are doing your job, you go back and find out what they give in information when Medvid first jumped ship from that time on. They gave misinformation as to why this photograph was published. Why, because they --

Q That is photograph number two?

A They said the guy on the far right is Medvid. So why did The Times-Picayune publish this photograph because that was identified to them as Medvid.

Q The man on the far right?

A So now the Medvid photograph is not, you cannot tell, you see. With this photograph I can tell a lot from.

Q All right, you are talking about the man that is second from the left?

A Right, second from the left from the bottom in photograph number one.

Q It is a much clearer photograph?

A Oh, yeah, much clearer photograph, yeah. In fact, I have met this guy, too, the guy at the bottom.

Q Who is he?

A He is the Soviet ship captain. And I am going to give you a piece of information you probably do not even know. Remember that Soviet ship, those two Soviet ships hitting in the, what is it, the Black Sea or whatever? It is just recently a while back. Okay, this is the Soviet ship captain that was in charge of the other ship that got in trouble, that is the same guy there, same captain. So that is kind of ironic because he is in the slammer over there now. That is true. His name, I got his name wrote down. It appeared in the paper and everything. I picked up on it because I follow those kinds of things.

Q Getting back to the actual photographs for a second.

A Okay.

Q You said you had been talking with Orest Baranyk?

A Right. He is the one that arranged with The Times-Picayune to get copies of the Matt Rose photographs.

Q Did he make arrangements to get copies of both photographs?

A All the photographs, yes.

Q How many photographs?

A Well, there was only two that came out like this. I say all the photographs, I am talking about both photographs, we had the frontal and the side view.

Q So from what you recall, these are copies of the photographs that Orest Baranyk was able to obtain?

A Right, I assume they are.

Q Did he obtain them or did he make arrangements for --

A He made arrangements for me to go over there and pick them up and I did. And, in fact, when I had this photograph, okay --

Q This is Photograph No. --

A Both of these photographs, we had both of these. That is when another man by the name of Mr. Jack Landau came into the picture.

Q Who is Jack Landau?

A He is a freelance reporter out of Washington, D.C. And he called me and got, you know, wanted to know the story and everything else like that. And he had gotten in contact with Curly Spurlock.

Q And Curly Spurlock is the Border Patrol Agent who put Medvid back on the ship?

A Right. And I was telling --

Q He had arranged for him to be put back on the ship?

A But he arranged -- Mr. Landau arranged for Spurlock and myself to get together at my home and he wanted to see the photographs that we had. Okay, to see the Matt Rose photographs.

Q He wanted Spurlock or Spurlock --

A No, Spurlock wanted to see what we had. Okay, so Mr. Spurlock comes and calls me in and talks on the phone, chit-chat, and all that like and he comes over to the house. Wayne is there, myself is there and --

Q Do you recall about when this was?

A The date?

Q The date.

A Oh, this is after the ship is gone and everything.

Q Was this after you had met with Jim Geltz?

A Yes, way down the road we are talking about maybe --

Q A couple of weeks?

A A couple of weeks after the ship had sailed, yeah. Yeah, I would think so, yeah.

So he come over to the house and was extremely nervous. We gave him a cup of coffee, he introduced himself, I introduced myself and all, and we started talking and I am trying to find a common ground with him. So he drinks about three cups of coffee and smokes about a pack of cigarettes in about thirty minutes. So, you know, he kind of eases down a little and without any talking, we are just talking generalities, we are not even talking about Medvid or nothing, nothing about the photographs or nothing, just trying to relax him and talk and get a background of him. He told me he was in the Marine Corps which I was an ex-Marine, too, reserves, and he was an embassy guard, that is what his job was. And, you know, we kind of hit a common ground. He kind of calmed down a little bit. And I says you want to see the photographs? He said yeah. So I show him the photographs. He said oh, man, I left my glasses home. I said well, that is kind of strange, you want to look at photographs and you leave your glasses to see? I said you want to see them, here, I said here, try mine. And he said yeah, I can see out of them. And he used mine because mine is just reading glasses and the top is clear. So he looked at the photographs and he says well, I really cannot tell you one way or the other. He says it appears, it does not appear and it appears to be the same guy. I said well, that is not telling me nothing. I said in your honest opinion, what do you think it is? He says I cannot really get a decision on it. And I got to talking and he relaxed and I says, you know, it is a shame because by this time I think they was already talking about reprimanding him for sending him back. I said it is a shame that, you know, you are the one getting blamed for this. He said well, I just did my job. And furthermore, the minute they tried to, you know, get me, he says, I have enough evidence to burn the State Department and Immigration. He said that twice.

Q Did he explain what he meant?

A I asked him that. He says he was going to start talking and then he just shut up and he says no when the time comes, he said, when the time comes I have, he says I have enough and he made that statement twice. He made that statement sitting at the table and after he was leaving and we were standing on outside on my back porch and he was on the ground he made that statement again, that emphatically, he said, I did my job. And he made sure we understood that. And he said, and he looked at me square in the face when he said that, I just did my job. In other words, just saying like I did what I was told to do. That is the kind of opinion I got out of it. And he said, but I do have enough evidence to burn the State Department and Immigration if they try to get me. And by the way, he has not been gotten to.

Q At that point he did not elaborate as to what he meant?

A No, he did not. For the record, and I want to go on the record that if this man was supposed to be so punished for doing what he did, how come to this day he is not punished? Okay? When a Federal Judge threw out the INS which was just a bunch of malarkey, it is a cover-up, they prosecuted him, slapped him on the wrist and the Federal Courts threw it out. So he never did get punished for this deal is what I want to clear the air on and that is a fact.

Q I am trying to go a little bit further. In a previous interview with the Commission staff, you advised us that you did meet with Spurlock later on?

A Yes, we did meet later on. I'm just going to go into some things, not a whole bunch because, you know, this is all kind of -- it is important but it is not really. Because it was to me the first time when I met the man, I think the man was sincere. He felt guilty for what he did. Because at the end of his -- on the INS report reason for jumping ship there is a message there that everybody is missing. He put reason for jumping ship, political and moral reasons. Now why on God's earth would he put that down there unless he was trying to tell everybody something, okay? If the man jumped for political and moral reasons, why on God's earth did you send him back to the ship?

Q Did he ever explain that to you?

A I asked him on that and he never would even elaborate too much on that. He says, he kind of gave me the impression that -- the second meeting he did not seem as comfortable as the first meeting.

Q Okay, do you recall when, about when the second meeting took place, was it several weeks or months?

A Several weeks. I think it was several weeks after. Yeah, several weeks after. I think I met him a total of three times after that.

Q Do you know what prompted the second meeting, was there any one thing that brought you together or did you call him or did he call you?

A No, he called me, every time he called me. I did not call him.

Q And did he tell, give you a reason for wanting to meet?

A Talk about the deal, the Medvid case.

Q Do you remember where you met him?

A In New Orleans, in New Orleans.

Q At --

A One time it was at the Beef Baron Restaurant on Canal Street.

Q Was that the second meeting or the third meeting, do you recall?

A Probably third meeting. One time we met just in his car, okay? And we sat on the corner of Claiborne and Canal and talked.

Q Do you think that was the second meeting?

A Second meeting there, and that was a brief meeting, too. It seemed like, the second meeting to me seemed like he was still being sincere, okay? And but he was extremely nervous at that time. We was only there five minutes that time.

MR. HEATH:

Was he trying to establish something at that meeting?

THE WITNESS:

He was trying to tell me something at that time but it appeared to me that, like the way he was acting like he was being followed, you know. That is the impression I got. Because when I got there, he got nervous, okay? And we really did not talk that much. When we got in the car he says, you know, I want to get together with you, he says not under these circumstances. I said well, why the hell did you ask me to come way across the damn river to meet you over here? He said well, I am on duty right now. He said it is better for me to meet on duty than off duty. Because they almost go and come as they please, I guess, I do not know. So but he got real nervous, he said well, this is not a good time to meet. He says I will call you later. I guess, I guess maybe see if I would meet him.

BY MISS CART:

Q Did he tell you anything at that meeting?

A Not really, not too much at that time except that -- well, again, I am not going to go into speculation, okay?

Q Well, did he ever discuss what had happened while he was on board ship with Medvid?

A To a degree he did discuss it, yeah.

Q Did he discuss it at that meeting or the third meeting?

A Next meeting, next meeting, next meeting was a much longer meeting. This to me is real speculative so I do not want to go into it really, to be honest about it. Because, you know, I am not going to be, I am not going to say something that I cannot back up one hundred percent, okay? And I felt at the time -- let me put this in the published record, okay? I feel that meeting there and the meeting after that to me was they were trying to set me up some kind of way, discredit me.

Q Who was trying to?

A The Government or who you want to put on it, you know, at the time. Because they had tried to discredit me from Day One, the Government did. And I feel towards the end there that they had got to Spurlock and he had fell in with them. I mean under no choice, I mean if I was in his situation I would probably do whatever the Government told me to do anyway. Your job, your career and you are playing with some heavy weight.

Q Did Spurlock ever tell you that he believed that the man he saw on the ship was not the same man that he picked up that evening?

A Okay, say that one more time so I can quite understand what you are getting at? In other words, you are trying to --

Q Did Spurlock believe that a switchover occurred?

A In the first beginning, the first meeting that we had --

Q At your house?

A Not at the house, no, the second, the third meeting it seemed to me he was a little sincere in that meeting, I do not know if it was that meeting. I think we either met three or four times afterwards. The last meeting was definitely trying to set me up, they was trying to make me to go run to the newspaper, make a babbling fool out of myself because I am not going --

Q Do you feel like he fed you misinformation then at that meeting?

A Misinformation -- at the end of the third meeting I think he was sincere. He never got back, when they took Medvid off the ship, okay, he never got back on the ship and he never got near Medvid after that. But he felt that the guy that he saw in there in the sick bay, because he never was able to get close enough to him by the way and the man was laying with his face turned like this, that he felt --

Q His face was turned --

A Towards the wall, towards the wall. The room was about a 22-foot long room, okay, the sick bay on the ship. They had, you know, bunks on one side of the room and they had a medicine cabinet at the end and on the other side of the wall a door at the other end and a door at this end. And when he came in he was told to sit there in this chair and not move. Americans were on board the ship, by the way.

Q When he arrived?

A When he arrived there, yeah.

Q Did he indicate to you who they were?

A He thought the people on board the ship were Immigration and State Department, okay?

Q So he indicated to you that he was not --

A That he was not the same person there by no means, shape or form.

Q Their party that boarded the ship was not the first American to board the ship, that somebody else was already on board the ship?

A Well, we are getting a little confused there. When he got back to the ship, it was not till the following day when he came back on duty that afternoon.

Q This is on Friday, October 25th?

A Right. He came on board the ship about three, 3:30 that afternoon.

Q When he boarded the ship, he indicated to you that when he boarded the ship --

A There was Americans already on board the ship at that time. And he was told to go in that room, that was Medvid over there in the sick bay, to sit right there and do not move, the Soviet ship.

Q Did he indicate to you that he got a full face look at --

A No, he never did walk over there. The doctor was in there constantly monitoring Medvid at the time. He said that they was in there, I think if my memory serves right, an hour, hour and a half, while he was in there at that time the doctor must have took his blood pressure ten times. And, in fact, he left the, you know, the blood pressure machine --

Q Gauge?

A Gauge on his arm, on Medvid's arm, on the guy's arm, okay? He had told me that the doctor kept coming over there and then the Soviet ship captain came in and the doctor talked a little bit and he was told that he could not stay in here no more, that he had to leave the room by the Soviet captain who spoke a broken English. He then stepped outside for a second and conferred with the other officials. He said well, look, you do what the man says and that is the last he saw of him, that was it.

MR. HEATH:

Did Ernest Spurlock ever mention to you that he had taken a photograph in chambers?

THE WITNESS:

I am not going to speculate on -- okay, I have told you that off the record, something like that.

I would like that stricken from the record.

MISS CART:

You can take that out.

BY MISS CART:

Q Can you stipulate to the other meeting places that you had with Ernest at least?

A It was all across the river.

MR. HEATH:

Did you meet at the same place, you mentioned the Beef Baron Restaurant?

THE WITNESS:

Basically the same place, I think that is the Beef Baron every time.

BY MISS CART:

Q But you met him at least four or five times?

A Yeah, to get down to the nitty gritty on it. I know the last two times, I know the last time for sure to me was definitely appeared to me to be some kind of a set-up type deal.

MR. HEATH:

Where did you meet at that time?

THE WITNESS:

That I would say the Beef Baron, you know.

Again, it has been a year and something.

BY MISS CART:

Q We understand that it has been a long time.
How was he trying to set you up, can you elaborate on that for us?

A No, I would rather not go into that because again, it is speculative.

Q Would it have been in his interest to discredit you?

A Sure. Sure. He was interested in discrediting me because I was basically the only witness hollering foul, you know, that something is wrong, that the Russians had made a switch with the man and that either the State Department was that ignorant or stupid, which I think they are anyway, and/or they were in on the switch, very simple.

Q Did Spurlock indicate to you how he recognized the man on the ship when he arrived, if he did not get a clear look at his face?

A You know, he says ---

Q Were there any marks on him?

A Well, the guy appeared to have been hit or beat up on, okay?

Q Where did he appear to have injuries?

A Eye, one eye was like --

Q His left eye?

A Yeah, left eye, he was laying like this with his head towards the bulkhead.

Q He was laying on his --

A He was laying on his back but like if you are laying down sleeping, okay, and you have got your head straight back or you are laying with your head turned to like a forty-five degree --

Q To the right?

A To the right, he said it looked like that eye was swollen up, kind of swollen a little bit. And he did remember hearing that they had a scuffle because he told me, he says the second meeting, just a little bit, we got to talking about what happened and he says yes, says when we signed the order to send him back to the ship and they come over to pick him up, the shipping agent, okay, they did not bring him back to the ship, the Immigration, I mean the Border Patrol people did not bring him to the ship. They called the shipping agent, he is the one that brought him back to the ship, him and a security guard. And he told him, his last parting shot to them, Spurlock said he said that is what made him mad, he said that if he gives them any trouble whatsoever, any resistance going back to the ship, to bring him back to Border Patrol Headquarters and you know what happened after that.

Q So Spurlock appeared to be very upset?

A Yeah, he was upset about that. In fact, he was emphatic about that and this was either the first or second meeting this came out. After that, you know, like I say, you know, you go down to what the man told me in the beginning when I think the man was sincere before he was gotten to. And the thing that he wrote down on his own paper Government document that is for public record, that seems to be telling us something you know right then and there. And then why would you send a man back to the ship after saying that?

Q Mr. Wyman, I would like to go back to your initial description of Miroslav Medvid.

A Yes.

Q Is there anything else that you can remember about his appearance or his looks that was unique that you can point to?

A Well, he had -- to give you a little more facial description, he had a horseshoe, I mean a horseshoe eyebrow, his eyebrows kind of --

Q They were arched?

A Arched, right.

Q Very arched?

A Arched normally, you know, where some people's eyebrows are not arched, they go out. He had a dimple like a Kirk Douglas chin, it goes out like a little bump on his chin and fair skinned, short hair but sort of a dirty blond hair.

Q Is there anything else about his complexion?

A Complexion was not, it was not too, it was not ruddy, I do not believe it was ruddy.

Q Was it smooth?

A Kind of smooth a little bit. It had, he had, appeared to me, maybe how a young man would have pimples and go away and they leave the little scars type thing. I could not say scars, but like he recently had pimples and they are clearing up.

Q Blemishes?

A Blemishes, and they are clearing up.

Q Okay. I want to show you some other photographs that were taken from a newspaper article, again these are not as clear as I would like. I am trying to get glossy prints, but I have not been able to obtain them yet.

Have you ever seen either of those photographs which we will mark as Exhibit 16 and do you recognize anyone in those photographs?

A You know, to me this photograph is not good at all. It does have some of the characteristics, these two photographs here of Medvid. But the one thing I notice here real quick about this, this is a much younger man. This guy, this man reminds me of a guy like eighteen years old.

MR. HEATH:

It reminds you of Medvid at an earlier age?

THE WITNESS:

Yeah, it looks like about an eighteen year old, seventeen year old kid. .

BY MISS CART:

Q Does this appear ---

A The photograph is not really good enough to really tell, it is too grainy. This is just a photocopy of the photograph and it is too grainy to tell. But it appears to me it could very possibly be him, but at a much earlier age.

Q Have you see these before?

A I have seen these. I think they had the same kind of thing, you got photocopies like this and I do not remember who, but I did see it before. .But the same situation, I wish I could see a good photograph of this, I could tell you a lot more. But the man does not -- this looks like a much younger man right there, you know, the first photograph.

Q Than the man you saw?

A Than the man that I saw, yeah.

MR. HEATH:

Can I ask one question?

Getting back to the association you had with Jim Geltz, did he ever mention to you in any of your conversations that he had encountered a military security type at a bar or at any establishment that approached him about his involvement in this case?

THE WITNESS:

No, that was my nephew Wayne.

BY MISS CART:

Q What did Wayne tell you?

A Who?

Q Wayne.

A Wayne told me that -- he goes to his favorite watering hole --

Q Which is where?

A The Knaughty Knight or something like that on the Westbank. I think that is what it is. So while he is there, the barmaid says Wayne, you ought to meet this guy over here, they are talking about the Medvid case.

Q You do not know who she would be, do you?

A No, I never been in the place, I do not know. Maybe a long time ago when I was younger, but not in the last ten years or so. But she brings the guy over and they get together and they are talking about -- he introduces himself, in fact, he even writes down his name and what it is, he is in security, Naval Security at the military base that they did the interview of Medvid. And he was the guard on the door where Medvid slept at.

Q Oh, inside LBQ?

A Yeah, his name is Barraclough. In fact, he wrote it down and gave Wayne that. And that is when Wayne thought, knew what is going on. Because Wayne asked him to describe Medvid to him.

Q Was this a chance encounter?

A Chance encounter? I **wouldn't** say chance encounter because, you know, he got too shook it seemed to me to be chance encounter.

Q Who, Barraclough got shook?

A Because my nephew Wayne asked him to describe Medvid and he did. He said well, the guy is about five six, five seven, about one hundred and forty, one hundred and forty five pounds. And he had olive skin, black hair, man in his early thirties. And Wayne said man, that is not the guy I knew as Medvid. And when he told him to describe him, Wayne said about five ten, one hundred and seventy five pounds, blondish hair, light skin, the guy got up and went over and made a phone call. And when he came back, the guy said somebody wants to talk to you about that. And Wayne said no, see you later. And he got up and went and got in his truck and went home, I mean his car, and went home.

Q So your memory of the conversation did not include anything about his, Barraclough's threatening Wayne or telling him not to do anything?

A No, not really, not that I remember at that time. Wayne-- I do not want to get into that but there was something later on happened, okay, and Wayne asked me never to talk about it. It was not this guy here, though.

Q Okay, well, all right.

Have you ever been told not to discuss this case by any Government official?

A Not really. But I was told by --

MR. HEATH:

In the beginning, not --

THE WITNESS:

Because it was funny at the time going back to a conversation I had with Spurlock, Spurlock said that McMahon was a head hunter out of Dallas. And that he was here to take charge and to take control of the situation. But he is a head hunter, that is how he said it, that is how he described McMahon, he is a head hunter.

BY MISS CART:

Q Have you ever been threatened as a result of anything you have said about the Medvid case?

A I do not want to get into that because it has happened, yeah. I ain't going to go into specifics, but that has happened in the last three months.

MR. HEATH:

Can you tell us about it?

THE WITNESS:

No, I am not going to go into really --

BY MISS CART:

Q Can you tell us off the top if that was an --

A I do not know if it was anything to do with the Government, but this is the first time that somebody has actually called me and said if you do not forget about this thing and shut up about it, something is going to happen.

Q Mr. Wyman, in addition to the statements which we produced as exhibits in the beginning of this deposition, and in addition to the interviews which you have granted, is there anyone else that you have talked to or have given a written statement to?

A Yes, I have. In the last month and a half I have given three statements.

Q Do you recall who those statements were given to?

A No. I gave them just the basics, though, I would not really go into any elaboration on it. I said I will give you what is already public records, I wanted to get into, to find out who they were.

Q Did they give you any indication who they were?

A One guy I think is writing a book out of L.A., okay? I think I have his name wrote down somewhere in shop. And I just went over the basics up to where Wayne took him to New Orleans and no further than that. And I will not go no further with nobody unless I know who I am talking to because I do not know who they are. And these other guys, they went as far as that point there and I said let's stop, I am not going to give you no more information because they were starting wanting to ask me about the speaking with Spurlock. I said we do not go no further till I know who the hell you are. And they would not identify themselves. And I said that is it, the conversation is ended because I am not going to give you no information if I do not know who I am giving this to.

Q In addition to Jack Landau, did you talk to any other reporters at length about any of this?

A I talked to The New York Times, they sent reporters down here, Brinkley was one of them and another man was with him. We talked at length with him and not really any detail to the other reporters, not really. Jack Landau was the main one, really.

Q Did you ever talk with John Barron of Readers Digest?

A Yeah, yeah. In fact, I am not going to go into great detail, okay, talking about what you was trying to get at a while ago about a photograph. Barron came down and tried to buy that photograph.

Q This is something you thought was misinformation that was provided to you?

A Right, misinformation.

MR. HEATH:

I see. We are talking about the alleged photograph that might have been taken on the boat while Medvid was on the bed?

THE WITNESS:

So he come down and tried to buy that photograph from Spurlock. But anyway, Barron, he worked for the Government at one time if my memory serves right in the intelligence branch. I do not know who, I do not know CIA or whatever it was. But to me he still reminded me of a person being in the military because once a military man, always a military man, you do not really change. Because any time a guy comes in that is working with another company and representing being an editor of that and he comes down here in civilian clothes which I call a shirt and pants but with his beautiful big black shiney military shoes on, it just did not add up right, okay?

Anyway, another thing, too,is he was talking about getting these photographs analyzed, supposedly.

BY MISS CART:

Q These are the Geltz photographs?

A Yeah, Geltz. And he sent them off to what I can understand to a company in California which was found out to be a company that does nothing but Government work for the Government and they -- boy, I tell you, this is a real joke, all they do is analyze space photographs. They do not do this kind of work. And you are going to send it to a lab and get things analyzed there? It just did not make sense. There is other labs, there are other labs in the city of New Orleans that can take and make and analyze photographs. And when the FBI said that statement that they cannot identify the person in this photograph, they are full of you know what. Because with the equipment they have today, they can take that photograph and say how high and how much every one of these men weigh. Because I know that for a fact because I am no dummy. I am an ex-policeman and we had equipment that can do that. And when they make a statement like that, that tells me something really stinks in the hierarchy.

Q Do you wish to make any other statements?

A Yeah. That if something does happen in the next few months or so, just remember I did tell you that something was coming down. Now this is the truth, this is the first time I got a phone call like that and it kind of shocked me, really.

Q Did you report it to the authorities?

A What do you report? It was like it came on, I answered the phone, it was a man, I said hello. He said is this Joe Wyman? I said yes, it is. He said if you know what is good for you, you will stop talking about the Miroslav Medvid case. It is history, it is done. If you do not stop talking about it, something is going to happen and that was it, he hung up, bump. And that was it. I did not tell my wife.

Q That is the only phone call?

A That is the only phone call I got that told you, you know, threatened me, in other words. This happened recently and that is, it is kind of old ball thing because it seemed like from the beginning if somebody was going to threaten you they would do it then. But this was recently. Maybe at the time this happened is at the time all these other things were going on with the other statements, okay?

Q When these other people were coming to you and asking you to give statements?

A Right, right, right, that is when it happened. I do not know where this came from, but it does shake me up a little bit. I mean, wouldn't it you?

Q Okay, that is all I have.

MR. HEATH:

I do not have anything additional.

We want to thank you for spending the time after so many interviews, one more time.

THE WITNESS:

Like I said, I may be a little off on the dates and times a little bit because like I say, it has been over a year and something.

But I am not mistaken about what this man looked like, that is imbedded in my mind.

MR. HEATH:

Thank you.

MISS CART:

Thank you.

(WHEREUPON: The deposition was then concluded.)

REPORTER'S CERTIFICATE

I, LEAH J. GLASS, Certified Shorthand Reporter in and for the State of Louisiana, do hereby certify that the within witness, after having been first duly sworn by the Reporter, to testify to the truth, the whole truth and nothing but the truth did testify as hereinabove set forth in the foregoing pages;

That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding;

That I am not of counsel, nor related to counsel or the parties hereto, and in no way interested in the outcome of this event.

Leah J. Glass

LEAH J. GLASS
Certified Shorthand Reporter

Wyman
#1

CHAPTER 45—COMMISSION ON SECURITY
COOPERATION IN EUROPE

Sec.
3001. Commission on Security and Cooperation in Europe; establishment.
3002. Function and duties of Commission.
3003. Membership of Commission; appointing authorities.
3004. Testimony of witnesses, production of evidence; issuance of subpena; administration of oaths.
3005. Presidential report to Congress; semiannual submission; contents.
3006. Commission report to Congress; periodic reports; expenditure of appropriations.
3007. Authorization of appropriations.
3008. Compensation of staff personnel; limitations.

§ 3001. Commission on Security and Cooperation in Europe; establishment

There is established the Commission on Security and Cooperation in Europe (hereafter in this chapter referred to as the "Commission").

Pub.L. 94-304, § 1, June 3, 1976, 90 Stat. 661.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 94-304, see 1976 U.S.Code Cong. and Adm.News, p. 1150.

§ 3002. Function and duties of Commission

The Commission is authorized and directed to monitor the acts of the signatories which reflect compliance with or violation of the articles of the Final Act of the Conference on Security and Cooperation in Europe, with particular regard to the provisions relating to Cooperation in Humanitarian Fields. The Commission is further authorized and directed to monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward taking advantage of the provisions of the Final Act to expand East-West economic cooperation and a greater interchange of people and ideas between East and West.

Pub.L. 94-304, § 2, June 3, 1976, 90 Stat. 661.

Historical Note

References in Text. The Final Act of the Conference on Security and Cooperation in Europe, referred to in text, means part four of the Helsinki Declaration which deals with follow-up to the Conference and possible steps to encourage compliance with its purposes and undertakings. The Declaration was signed on Aug. 1, 1975 by the nine members of the European Economic Community and the 35 participants to the Conference included all the European States, both Communist (except Albania) and non-Communist, the United States, Canada, and several non-participating Mediterranean states.

Legislative History. For legislative history and purpose of Pub.L. 94–304, see 1976 U.S.Code Cong. and Adm.News, p. 1159.

§ 3003. Membership of Commission; appointing authorities

The Commission shall be composed of fifteen members as follows:

(1) Six Members of the House of Representatives appointed by the Speaker of the House of Representatives. Four members shall be selected from the majority party and two shall be selected, after consultation with the minority leader of the House, from the minority party. The Speaker shall designate one of the House Members as chairman.

(2) Six Members of the Senate appointed by the President of the Senate. Four members shall be selected from the majority party and two shall be selected, after consultation with the minority leader of the Senate, from the minority party.

(3) One member of the Department of State appointed by the President of the United States.

(4) One member of the Defense Department appointed by the President of the United States.

(5) One member of the Commerce Department appointed by the President of the United States.

Pub.L. 94–304, § 3, June 3, 1976, 90 Stat. 661.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 94–304, see 1976 U.S.Code Cong. and Adm.News, p. 1159.

§ 3004. Testimony of witnesses, production of evidence; issuance of subpena; administration of oaths

In carrying out this chapter, the Commission may require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary. Subpenas may be issued over the signature of the Chairman of the Commission or any member designated by him, and may be served by any person designated by the Chairman or such member. The Chairman of the Commission, or any member designated by him, may administer oaths to any witness.

Pub.L. 94–304, § 4, June 3, 1976, 90 Stat. 661.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 94-304, see 1976 U.S.Code Cong. and Adm.News, p. 1159.

West's Federal Forms

Administrative subpoenas, enforcement of, see § 6004 et seq.
Subpoena of witnesses, see § 3081 et seq.

§ 3005. Presidential report to Congress; semiannual submission; contents

In order to assist the Commission in carrying out its duties, the President shall submit to the Commission a semiannual report, the first one to be submitted six months after June 3, 1976, which shall include (1) a detailed survey of actions by the signatories of the Final Act reflecting compliance with or violation of the provisions of the Final Act, and (2) a listing and description of present or planned programs and activities of the appropriate agencies of the executive branch and private organizations aimed at taking advantage of the provisions of the Final Act to expand East-West economic cooperation and to promote a greater interchange of people and ideas between East and West.

Pub.L. 94-304, § 5, June 3, 1976, 90 Stat. 661.

Historical Note

References in Text. The Final Act of the Conference on Security and Cooperation in Europe, referred to in text, means part four of the Helsinki Declaration which deals with follow-up to the Conference and possible steps to encourage compliance with its purposes and undertakings. The Declaration was signed on Aug. 1, 1975 by the nine members of the European Economic Community and the 35 participants to the Conference included all the European States, both Communist (except Albania) and non-Communist, the United States, Canada, and several non-participating Mediterranean states.

Legislative History. For legislative history and purpose of Pub.L. 94-304, see 1976 U.S.Code Cong. and Adm.News, p. 1159.

§ 3006. Commission report to Congress; periodic reports; expenditure of appropriations

The Commission is authorized and directed to report to the House of Representatives and the Senate with respect to the matters covered by this chapter on a periodic basis and to provide information to Members of the House and Senate as requested. For each fiscal year for which an appropriation is made the Commission shall submit to Congress a report on its expenditures under such appropriation.

Pub.L. 94-304, § 6, June 3, 1976, 90 Stat. 662.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 94-304, see 1976 U.S.Code Cong. and Adm.News, p. 1159.

§ 3007. Authorization of appropriations

(a) There is authorized to be appropriated to the Commission for each fiscal year and to remain available until expended $550,000 to assist in meeting the expenses of the Commission for the purpose of carrying out the provisions of this chapter, such appropriation to be disbursed on voucher to be approved by the Chairman of the Commission.

(b) For purposes of section 1754(b) of this title, the Commission shall be deemed to be a standing committee of the Congress and shall be entitled to use funds in accordance with such sections.

Pub.L. 94–304, § 7, June 3, 1976, 90 Stat. 662; Pub.L. 94–534, Oct. 17, 1976, 90 Stat. 2495; Pub.L. 95–426, Title VII, § 702, Oct. 7, 1978, 92 Stat. 992.

Historical Note

1978 Amendment. Subsec. (a). Pub.L. 95–426 substituted "$550,000" for "$350,000".

1976 Amendment. Subsec. (a). Pub.L. 94–534, § 1(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub.L. 94–534, § 1(2), added subsec. (b).

Legislative History. For legislative history and purpose of Pub.L. 94–304, see 1976 U.S.Code Cong. and Adm.News, p. 1150. See, also, Pub.L. 95–426, 1978 U.S.Code Cong. and Adm.News, p. 2424.

§ 3008. Compensation of staff personnel; limitations

The Commission may appoint and fix the pay of such staff personnel as it deems desirable, without regard to the provisions of Title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates.

Pub.L. 94–304, § 8, June 3, 1976, 90 Stat. 662.

Historical Note

References in Text. The provisions of Title 5 governing appointments in the competitive service, referred to in the text, are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 94–304, see 1976 U.S.Code Cong. and Adm.News, p. 1159.

Legislative History. For legislative history and purpose of Pub.L. 99-93 see 1985 U.S. Code Cong. and Adm. News, p. 329.

CHAPTER 44—JAPAN-UNITED STATES FRIENDSHIP

§ 2905. Administrative powers of Commission

In order to carry out its functions under this chapter, the Commission is authorized to—

[See main volume for text of (1) to (3)]

(4) direct the Secretary of the Treasury to make expenditure of the income of the Fund, any amount of the contributions deposited in the Fund from nonappropriated sources pursuant to paragraph (2) or (3) of this section, and not to exceed 5 percent annually of the principal of the total amount appropriated to the Fund to carry out the purposes of this chapter, including the payment of Commission expenses if needed, except that any amounts expended from amounts appropriated to the Fund under section 2902(e)(1) of this title shall be expended in Japan;

[See main volume for text of (5) to (11)]

(As amended Pub.L. 97-241, Title V, § 503(a), Aug. 24, 1982, 96 Stat. 298.)

1982 Amendment. Par. (4). Pub.L. 97-241 substituted ", any amount of the contributions deposited in the Fund from nonappropriated sources pursuant to paragraph (2) or (3) of this section, and not to exceed 5 percent annually of the principal of the total amount appropriated to the Fund" for "and not to exceed 5 per centum annually of the principal of the Fund".

Legislative History. For legislative history and purpose of Pub.L. 97-241, see 1982 U.S. Code Cong. and Adm. News, p. 651.

§ 2906. Management of the Friendship Trust Fund

[See main volume for text of (a) to (d)]

(e) Payments for implementation of programs and necessary expenses of Commission; appropriation of amounts; exceptions

In accordance with section 2905(4) of this title, the Secretary shall pay out of the Fund such amounts, including expenses of the Commission, as the Commission considers necessary to carry out the provisions of this chapter; except that amounts in the Fund, other than amounts which have been appropriated and amounts received (including amounts earned as interest on, and proceeds from the sale or redemption of, obligations purchased with amounts received) by the Commission pursuant to sections 2905(2) and (3) of this title, shall be subject to the appropriation process.

(As amended Pub.L. 97-241, Title V, § 503(b), Aug. 24, 1982, 96 Stat. 298.)

1982 Amendment. Subsec. (e). Pub.L. 97-241 inserted "(including amounts earned as interest on, and proceeds from the sale or redemption of, obligations purchased with amounts received)" following "amounts received".

Legislative History. For legislative history and purpose of Pub.L. 97-241, see 1982 U.S. Code Cong. and Adm. News, p. 651.

CHAPTER 45—COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Sec.
3006. Commission membership.
  (a) Selection and appointment of members.
  (b) Commission Chairman and Cochairman.
3007. Appropriations for Commission.
  (a) Authorization; disbursements.
  (b) Use of foreign currencies.
  (c) Official reception and representational expenses.
  (d) Foreign travel for official purposes.
3008. Commission staff.
  (a) Personnel and administration committee.
  (b) Committee functions.
  (c) Staff appointments.
  (d) Commission employees as congressional employees.
3009. Printing and binding costs [New].

§ 3002. Function and duties of Commission

The Commission is authorized and directed to monitor the acts of the signatories which reflect compliance with or violation of the articles of the Final Act of the Conference on Security and Cooperation in Europe, with particular regard to the provisions relating to human rights and Cooperation in Humanitarian Fields. The Commission is further authorized and directed to monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward taking advantage of the provisions of the Final Act to expand East-West economic cooperation and a greater interchange of people and ideas between East and West.

(As amended Pub.L. 99-7, § 2, Mar. 7, 1985, 99 Stat. 19.)

1985 Amendment. Pub.L. 99-7 inserted "human rights and" after "relating to".

Effective Date of 1985 Amendment. Section 6 of Pub.L. 99-7 provided that:

"(a) Except as provided in subsection (b), this Act and the amendments made by this Act [enacting sections 3003(b), 3007(d), and 3008(a) and (b) of this title, amending this section and sections 3003(a), 3007(a), and 3008(c) of this title, and enacting provisions set out as a note under section 3003 of this title] shall take effect on the date of enactment of this Act [Mar. 27, 1985] or April 15, 1985, whichever is later.

"(b)(1) The amendment made by subsection (b) of the first section [enacting section 3003(c) and (d) of this title] shall take effect on the first day of the One Hundredth Congress [which will convene in January 1987].

"(2) Subsection (d) of section 8 of the Act entitled 'An Act to establish a Commission on Security and Cooperation in Europe', approved June 3, 1976 [section 3008(d) of this title] (as added by section 5 of this Act), shall be effective as of June 3, 1976."

§ 3003. Commission membership

(a) Selection and appointment of members

The Commission shall be composed of twenty-one members as follows:

(1) Nine Members of the House of Representatives appointed by the Speaker of the House of Representatives. Five Members shall be selected from the majority party and four Members shall be selected, after consultation with the minority leader of the House, from the minority party.

(2) Nine Members of the Senate appointed by the President of the Senate. Five Members shall be selected from the majority party of the Senate, after consultation with the majority leader, and four Members shall be selected, after consultation with the minority leader of the Senate, from the minority party.

(3) One member of the Department of State appointed by the President of the United States.

(4) One member of the Department of Defense appointed by the President of the United States.

(5) One member of the Department of Commerce appointed by the President of the United States.

(b) Commission Chairman and Cochairman

There shall be a Chairman and a Cochairman of the Commission.

(As amended Pub.L. 99-7, § 1(a), Mar. 27, 1985, 99 Stat. 18.)

Amendment of Section

Pub.L. 99-7, §§ 1(b), 6(b)(1), Mar. 27, 1985, 99 Stat. 18, 20, provided that, effective on the first day of the 100th Congress [which will convene in January 1987], this section is amended by added at the end thereof the following:

"(c) At the beginning of each odd-numbered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the Senate Members as Chairman of the Commission. At the beginning of each even-numbered Congress, the Speaker of the House of Representatives shall designate one of the House Members as Chairman of the Commission.

"(d) At the beginning of each odd-numbered Congress, the Speaker of the House of Representatives shall designate one of the House Members as Cochairman of the Commission. At the beginning of each even-num-

bered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the Senate Members as Cochairman of the Commission."

1985 Amendment. Subsec. (a). Pub.L. 99–7, § 1(a), designated existing provisions as subsec. (a) and in subsec. (a) as so designated substituted "twenty-one" for "fifteen" in the provisions preceding par. (1).

Subsec. (a)(1). Pub.L. 99–7, § 1(a), increased from six to nine the number of Members of the House of Representatives appointed by the Speaker, increased from four to five the number selected from the majority party, increased from two to four the number selected from the minority party, and struck out provision directing the Speaker to designate one of the House Members as chairman.

Subsec. (a)(2). Pub.L. 99–7, § 1(a), increased from six to nine the number of Senators appointed by the President of the Senate, increased from four to five the number selected from the majority party, increased from two to four the number selected from the minority party, and added provision requiring consultation with the majority leader prior to naming the Senators selected from the majority party.

Subsec. (a)(3) to (5). Pub.L. 99–7, § 1(a), reenacted pars. (3) to (5) without change.

Subsec. (b). Pub.L. 99–7, § 1(a), added subsec. (b).

Effective Date of 1985 Amendment. Amendment of subsecs. (a) and (b) of this section by Pub.L. 99–7 effective Apr. 15, 1985, see section 6(a) of Pub.L. 99–7, set out as a note under section 3002 of this title.

Designation of Chairman and Cochairman for Duration of 99th Congress. Section 1(c) of Pub.L. 99–7 provided that: "On the effective date of this subsection [Apr. 15, 1985], the President of the Senate, on the recommendation of the majority leader, shall designate one of the Senate Members to serve as Chairman of the Commission for the duration of the Ninety-ninth Congress, and the Speaker of the House of Representatives shall designate one of the House Members to serve as Cochairman of the Commission for the duration of the Ninety-ninth Congress."

§ 3007. Appropriations for Commission

(a) Authorization; disbursements

(1) There are authorized to be appropriated to the Commission for each fiscal year such sums as may be necessary to enable it to carry out its duties and functions. Appropriations to the Commission are authorized to remain available until expended.

(2) Appropriations to the Commission shall be disbursed on vouchers approved—

(A) jointly by the Chairman and the Cochairman, or

(B) by a majority of the members of the personnel and administration committee established pursuant to section 3008(a) of this title.

(b) Use of foreign currencies

For purposes of section 1754(b) of this title, the Commission shall be deemed to be a standing committee of the Congress and shall be entitled to use funds in accordance with such sections.

(c) Official reception and representational expenses

Not to exceed $6,000 of the funds appropriated to the Commission for each fiscal year may be used for official reception and representational expenses.

(d) Foreign travel for official purposes

Foreign travel for official purposes by Commission members and staff may be authorized by either the Chairman or the Cochairman.

(As amended Pub.L. 96–60, Title IV, § 401, Aug. 15, 1979, 93 Stat. 403; Pub.L. 99–7, §§ 3, 4, Mar. 27, 1985, 99 Stat. 19.)

1985 Amendment. Subsec. (a). Pub.L. 99–7, § 3, substituted provisions authorizing appropriations as may be necessary to carry out the Commission's duties and functions for provisions which had formerly authorized appropriations of $550,000 for each fiscal year, substituted provisions requiring joint approval of vouchers by the Chairman and Cochairman for provisions which had formerly required only the approval of the chairman, and added provisions under which vouchers can also be approved by a majority of the members of the personnel and administration committee established pursuant to section 3008(a) of this title.

Subsec. (d). Pub.L. 99–7, § 4, added subsec. (d).

1979 Amendment. Subsec. (c). Pub.L. 96–60 added subsec. (c).

Effective Date of 1985 Amendment. Amendment by Pub.L. 99–7 effective Apr. 15, 1985, see section 6(a) of Pub.L. 99–7, set out as a note under section 3002 of this title.

Legislative History. For legislative history and purpose of Pub.L. 96–60, see 1979 U.S. Code Cong. and Adm. News, p. 982.

§ 3008. Commission staff

(a) Personnel and administration committee

The Commission shall have a personnel and administration committee composed of the Chairman, the Cochairman, the senior Commission member from the minority party in the House of Representatives, and the senior Commission member from the minority party in the Senate.

(b) Committee functions

All decisions pertaining to the hiring, firing, and fixing of pay of Commission staff personnel shall be by a majority vote of the personnel and administration committee, except that—

(1) the Chairman shall be entitled to appoint and fix the pay of the staff director, and the Cochairman shall be entitled to appoint and fix the pay of his senior staff person; and

(2) the Chairman and Cochairman each shall have the authority to appoint, with the approval of the personnel and administration committee, at least four professional staff members who shall be responsible to the Chairman or the Cochairman (as the case may be) who appointed them.

The personnel and administration committee may appoint and fix the pay of such other staff personnel as it deems desirable.

(c) Staff appointments

All staff appointments shall be made without regard to the provisions of Title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of Title 5 relating to classification and general schedule pay rates.

(d) Commission employees as congressional employees

(1) For purposes of pay and other employment benefits, rights, and privileges and for all other purposes, any employee of the Commission shall be considered to be a congressional employee as defined in section 2107 of Title 5.

(2) For purposes of section 3304(c)(1) of Title 5, staff personnel of the Commission shall be considered as if they are in positions in which they are paid by the Secretary of the Senate or the Clerk of the House of Representatives.

(3) The provisions of paragraphs (1) and (2) of this subsection shall be effective as of June 3, 1976.

(As amended Pub.L. 99–7, § 5, Mar. 27, 1985, 99 Stat. 19.)

References in Text. The provisions of Title 5 governing appointments in the competitive service, referred to in subsec. (c), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

1985 Amendment. Subsecs. (a), (b). Pub.L. 99–7 added subsecs. (a) and (b).

Subsec. (c). Pub.L. 99–7 designated existing provisions as subsec. (c) and, in subsec. (c) as so designated, substituted "All staff appointments shall be made" for "The Commission may appoint and fix the pay of such staff personnel as it deems desirable,".

Subsec. (d). Pub.L. 99–7 added subsec. (d).

Effective Date of 1985 Amendment. Enactment of subsecs. (a) and (b) and amendment of subsec. (c) of this section by Pub.L. 99–7 effective Apr. 15, 1985, see section 6(a) of Pub.L. 99–7, set out as a note under section 3002 of this title.

Enactment of subsec. (d) of this section by Pub.L. 99–7 effective June 3, 1976, see section 6(b)(2) of Pub.L. 99–7, set out as a note under section 3002 of this title.

§ 3009. Printing and binding costs

For purposes of costs relating to printing and binding, including the costs of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of the Congress.

(Pub.L. 99–190, § 134, Dec. 19, 1985, 99 Stat. 1322.)

Wyman
#2

III

99TH CONGRESS
2D SESSION

S. RES. 353

Authorizing expenditures by committees of the Senate.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27 (legislative day, FEBRUARY 24), 1986

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar

MARCH 13 (legislative day, MARCH 10), 1986

Considered, amended, and agreed to

RESOLUTION

Authorizing expenditures by committees of the Senate.

Resolved, That this resolution may be cited as the "Omnibus Committee Funding Resolution of 1986".

AGGREGATE AUTHORIZATION

SEC. 2. (a) In carrying out its powers, duties, and functions under the Standing Rules of the Senate, and under the appropriate authorizing resolutions of the Senate, there is authorized in the aggregate $43,597,366, in accordance with the provisions of this resolution, for all Standing Committees of the Senate, the Special Committee on Aging, the Select

(5) in section 10(b) strike out "$2,333,631" and insert in lieu thereof "$2,293,631".

(6) in section 12(b) strike out "$2,434,509" and insert in lieu thereof "$2,397,509".

(7) in section 13(b) strike out "$4,440,229" and insert in lieu thereof "$4,233,825".

(8) in section 14(b) strike out "$4,246,242" and insert in lieu thereof "$4,029,487".

INVESTIGATION BY THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

SEC. 23. (a) It is the sense of the Senate that the Commission on Security and Cooperation in Europe (hereafter in this section known as the "Commission") should—

(1) conduct an investigation to determine—

(A) whether any officer or employee of the United States violated any law of the United States or any State or local law, including any statute, regulation, ordinance, or procedure promulgated pursuant to law, in connection with the defection attempt of Miroslav Medvid;

(B) the instances in which an individual (other than the individual referred to in clause (A)), who was a national of the Soviet Union or a Soviet-bloc Eastern European country, requested political asylum in the United States and was returned to the authorities of his country in violation of any United States, State, or local law, including any statute, regulation, ordinance, or procedure promulgated pursuant to law; and

(C) whether the treatment accorded to individuals described in clauses (A) and (B) requires changes in the laws of the United States; and

(2) submit a report, not later than one year after the date of adoption of this resolution, to the House of Representatives and the Senate on the findings of such investigation, including any recommendations for changes in the laws of the United States.

(b) Salaries and expenses in connection with the implementation of this section shall be paid from the contingent fund of the Senate out of the Account for Miscellaneous Items, subject to the following terms and conditions:

(1) The aggregate amount of salaries and expenses payable under this section shall not exceed $200,000.

(2) Such salaries shall be payable only for not more than five individuals at any time—

(A) who shall be employees of the Senate and shall be under the policy direction of the Chairman and Cochairman of the Commission; and

(B) who shall be appointed to perform services in the conduct of activities under this section, on or after the date of adoption of this resolution, and who shall have their compensation fixed at an annual rate, by the Secretary of the Senate, upon the joint recommendation of the Chairman and Cochairman of the Commission.

(3) Payment of expenses shall be disbursed upon vouchers approved jointly by the Chairman and Cochairman of the Commission, and no voucher shall be required for the disbursement of a salary of an individual appointed under paragraph (2).

(4) For purposes of determining whether and to what extent any travel or other official expense incurred by the Commission in carrying out any activity under this section is payable from the contingent fund of the Senate, such expense shall be treated as if it has been incurred by a standing committee of the Senate and as if the Commission and its staff were members and staff, respectively, of such a committee.

(5) Any expense under this section may be payable only if—

(A) the Committee on Rules and Administration of the Senate approves;

(B) such expense is of the type for which payment may be made if incurred by a standing committee of the Senate;

(C) such expense is not attributable to the detailing of employees; and

(D) the payment of such expense is otherwise in accordance with all laws, rules, and regulations governing expenses of standing committees of the Senate.

(6) Not more than $20,000 of the funds made available by this subsection shall be available for the procurement by the Secretary of the Senate, upon the joint recommendation of the Chairman and Cochairman of the Commission, of services, on a temporary basis, of individual consultants, or organizations thereof, with the prior consent of the Committee on Rules and Administration of the Senate. Such services may be procured by contract with the providers acting as independent contractors or, in the case of individuals, by employment at daily rates of compensation not in excess of the per diem equivalent of the highest gross rate of annual compensation which may be paid to employees of a standing committee of the Senate. Any such contract shall not be subject to the provisions of

section 5 of title 41, United States Code, or any other provision of law requiring advertising.

(c) None of the funds may be obligated from the contingent fund of the Senate to carry out any provision of this section on or after a date 30 days after—

(1) the date on which the report described in subsection (a)(2) is submitted, or

(2) a date one year after the date of adoption of this resolution,

whichever comes first.

(d) For purposes of this section, the term "Soviet-bloc Eastern European country" includes Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, and Romania.

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Wyman
#3

do not spend it all then you turn it back to the Treasury."

☐ 1510

Senator QUAYLE has introduced legislation along those lines. I have cosponsored that legislation. I think that is exactly what we need, and we need it by both Members of the Senate and Members of the House if we are going to be successful in getting this open-ended entitlement reformed and under control.

So, again, I congratulate the authors, Senator FORD and Senator MATHIAS, for bringing this resolution forward. I would certainly like to see it strengthened, if possible, in statutory form or at least in a concurrent resolution where it would apply to the House as well.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

☐ 1540

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1958

(Purpose: To make technical amendments to Senate Resolution 353 of the Ninety-ninth Congress)

Mr. HUMPHREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. HUMPHREY] proposes an amendment numbered 1958.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC.   . Section 23 of Senate Resolution 353 of the Ninety-ninth Congress (as agreed to by the Senate on March 13, 1986) is amended—

(1) by striking out in subsection (a)(2) "adoption of this resolution" and inserting in lieu thereof "May 14, 1986";

(2) by amending subsection (c) to read as follows:

"(c) None of the funds may be obligated from the contingent fund of the Senate to carry out any provision of this section on or after a date 30 days after the date on which the report described in subsection (a)(2) is submitted.".

Mr. HUMPHREY. Mr. President, back in March, the Senate adopted an amendment sponsored by Senator DOLE and Senator DIXON.

The PRESIDING OFFICER. The Chair advises that the committee amendment is pending. It will take unanimous consent to set it aside.

Mr. HUMPHREY. I ask unanimous consent that the committee amendment be set aside.

Mr. MATHIAS. Mr. President, reserving the right to object, does the Senator want to set the committee amendment aside or amend it?

The PRESIDING OFFICER. Does the Senator want to set the committee amendment aside or would he like to amend it?

Mr. HUMPHREY. The Senator from New Hampshire wishes to amend the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator may proceed.

Mr. HUMPHREY. Mr. President, in March, the Senate adopted a resolution in the form of an amendment sponsored by Senator DOLE, Senator DIXON, and me, the intent of which was to establish a Senate panel to investigate the case of Miroslav Medvid, the Ukranian sailor who jumped ship back in October. Some weeks were necessary to iron out administrative difficulties following the Senate's adoption of that amendment. The purpose of the amendment which I have now submitted is to restore the 1-year charter; that is, to make us whole with respect to time.

It is that simple. It is a technical amendment to a Senate resolution passed in March. I understand it is agreeable to the majority and the minority floor managers.

Mr. MATHIAS. Mr. President, the Senator is correct. There is no objection registered with me. I have no objection on this side.

Mr. FORD. Mr. President, there is no objection to the Senator's amendment on this side. It merely extends the resolution by 2 months. That takes the slack out of the 2 months' delay in working out the budget and the approval by the Rules Committee. I think the distinguished Senator from New Hampshire, under the circumstances, is entitled to 2 months.

This side has no objection.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1958) was agreed to.

Mr. HUMPHREY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay this motion on the table.

The motion to lay on the table was agreed to.

FIRST COMMITTEE AMENDMENT

Mr. MATHIAS. Mr. President, what is the pending question?

The PRESIDING OFFICER. The pending question is the first-reported committee amendment.

The amendment is as follows:

On page 2, line 3, strike "costs for mass mailings", and insert "official mail costs".

Mr. FORD. Mr. President, we have no objection to the committee amendment on this side. We are prepared to accept the amendment.

FICER. The question is on agreeing to the first committee amendment.

The first committee amendment was agreed to.

REMAINING COMMITTEE AMENDMENTS

Mr. FORD. Now what is the pending business, Mr. President?

The PRESIDING OFFICER. The second reported committee amendment is now the pending business.

Mr. FORD. Mr. President, my distinguished colleague [Mr. MATHIAS] will agree with this, I hope. These are just technical amendments that change lines to strike words like "costs for mass mailings" and insert in lieu thereof "official mail costs."

I wonder if we might take these en bloc.

Mr. MATHIAS. Mr. President, the Senator from Kentucky makes a practical suggestion as he usually does. I suggest that we take all the committee amendments en bloc.

Mr. FORD. I ask unanimous consent that we consider all these amendments en bloc.

The PRESIDING OFFICER. Is there objection?

Hearing none, it is so ordered.

The committee amendments are as follows:

On page 2, line 11, strike "costs for mass mailings", and insert "official mail costs";

On page 3, line 7, strike "the costs of mass mailings", and insert "official mail costs";

On page 3, line 13, after "costs", insert "(for the Senate)";

On page 3, line 17, strike "(other", through and including "mailings)" on line 18;

On page 3, line 18, strike "Senators,";

On page 3, beginning on line 22, strike "for the costs of official mailings", and insert "for official mail costs";

On page 4, beginning on line 23, strike "the costs of mass mailings", and insert "official mail costs";

On page 5, line 8, strike "3210(a)(5)(D)", and insert "3210(a)(6)(E)".

The PRESIDING OFFICER. The question is on agreeing to the committee amendments en bloc.

The committee amendments were agreed to en bloc.

Mr. FORD. Mr. President, the pending business now is the resolution itself; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. MATHIAS. Mr. President, I should propose that in the next few minutes, we act on the resolution but, in order that any Senator who wishes to speak may have that opportunity, I shall suggest the absence of a quorum. I suggest that it not last more than a minute or two. Then I shall ask unanimous consent to call it off and proceed with the vote.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Wyman
#4

Form I-215B
(Rev. 9-1-72)Y

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

RECORD OF SWORN STATEMENT IN AFFIDAVIT FORM

AFFIDAVIT

IN RE: A16 058 032 MEDVIC MIROSLAV FILE NO.

EXECUTED AT BELLS CHASE, LA. DATE October 28, 1985

Before the following officer of the U.S. Immigration and Naturalization Service:
MICHAEL E. McMAHON S/SA

in the ENGLISH language. Interpreter N/A used.

I, Joseph H. Wyman, acknowledge that the above-named officer has identified himself to me as an officer of the United States Immigration and Naturalization Service, authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. He has informed me that he desires to take my sworn statement regarding:

ANY AND ALL KNOWLEDGE OF A RUSSIAN CREWMEMBER OR DESERTER YOU MAY HAVE ENCOUNTERED ON October 24, 1985.

Q. Did you have occassion on Thursday evening October 24th, 1985 to SPEAK TO A RUSSIAN CREWMAN.

A. YES ABOUT 7:00 TO APPROX. 7:30 PM. WHILE I WAS ABOUT TO CLOSE MY STORE. MY NEPHEW AND MYSELF WERE OUTSIDE THE BUILDING LOCATED AT 348 BELLE CHASSE HWY. SOUTH BELLE CHASSE, LA. WHEN A MAN CAME RUNNING UP TO US SPEAKING A ~~FOREIGNER~~ FOREIGN LANGUAGE DRESSED IN CUTOFF BLUE JEANS AND A T SHIRT WITH TENNIS SHOES. THIS MAN WAY SOAKIN WET AND GESTURED THAT HE HAD JUMPED OFF A SHIP AND SAID NEW ORLEANS OR SOMETHIN THAT SOUNDED LIKE IT. I THEN POINTED AT HI AND SAID NEW ORLEANS YOU? AND HE NODDE YES. HE WAS CARRYING A SMALL BROWN JAR THAT CONTAINED ALL HIS PAPERS & WATCH. AT TH POINT I TOLD MY NEPHEW WAYNE WYMAN TH I THOUGHT HE WAS A RUSSIAN CREWMAN TRYING T DEFECT TO THE U.S. I THEN CONTINUED TO REASSURE THE RUSSIAN THAT EVERYTHING WAS O.K. BU HE KEPT LOOKING AROUND BEHIND HIM AND WAS EXTREM NERVOUS. I THEN TALKED TO WAYNE ABOUT TAKING HIM TO NEW ORLEANS WHERE HE WANTED GO. THEY THEN LEFT IN THE CAR AND THAT WAS THE LAST TIME I SAW THE RUSSIAN.

I have read (or have had read to me) the foregoing statement, consisting of 3 pages. I state that the answers made therein by me are true and correct to the best of my knowledge and belief and that this statement is a full, true, and correct record of my interrogation on the date indicated by the above-named officer of the Immigration and Naturalization Service. I have initialed each page of this statement [and the correction(s) noted on page(s) 0].

Signature Joseph A. Ortego

348 Belle Chasse Highway South

Subscribed and sworn to before me at Belle Chasse Louisiana

on October 23, 1985

Michael A. McMahon

Officer, United States Immigration and Naturalization Service

Witnessed by: ....

RECORD OF SWORN STATEMENT

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Form I-263A (Rev. 11-20-63)

Wyman
#5

APPENDIX 5

SWORN AFFIDAVITS OF MESSRS. JOSEPH AND WAYNE WYM

In the Parish of PLAQUEMINES,
TOWN OF BELLE CHASSE, STATE OF LOUISIANA
I Joseph WYMAN, duly sworn
hereby give the following statement
of my own free will and accord:

1. My name is Joseph Wyman and I reside in Belle Chasse, Louisiana.
2. Today is November 1, 1985, and I am providing this statement to Orest A. Jejna of Phoenix, Arizona.
3. On October 24, 1985, a Thursday, at 7:30 - 8:00 P.M., I was closing my jewelry store when I noticed a man running up the parking lot and over to my nephew, Wayne Wyman.
4. My nephew asked me to come there because this man was speaking in a foreign language.

5. I then walked over to them and the man appeared very excited and I noticed that he was soaking wet. It was not raining that night. The man was babbling or trying to speak in a foreign language.

The only thing I was able to understand was "NOVI ORLEAN". I understood this to mean New Orleans, I then understood the language to be some Eastern European dialect.

6. I then asked the man if he was Russian. He responded, by beating his chest with his fist, and saying "Ukrainian".

7. The man appeared extremely nervous and kept looking South, the direction from which he came.

8 The man was dressed in the following manner: He had on brown shorts, blue pullover shirt, sneakers and black sox.

The man was carrying a brown jar which I later learned from my Nephew; 16 contained The mans papers, watch and a small red object.

9. I then spoke with my nephew and tried to calm the man down.

~~[illegible]~~

10. I then asked the man and said: "You, New Orleans". He said "YES".

I asked him again "You, Defect, New Aleans". The man responded "YES"

11. I'm not sure if the man understood

what I meant, but, based on the facts before me, I felt this man was trying to defect to the United States

12. Based on my past experience as a Jefferson Parish Deputy Sheriff, I felt this man was trying to defect to the United States.

13. I then asked my Nephew to take the man to New Orleans where he wanted to go. ~~from~~

I then asked the man, "New Orleans?" and gestured "where". He responded "Policia"

14. My nephew agreed to take him to New Orleans and they both left in my nephews car.

15. Approximately 3-5 minutes later, there

man approached me and only one man spoke. Two of the men were tall and large muscularly and the other one was of ~~avag~~ average height and weight.

16. One of the men asked me if I had a man walking around. I asked him "Why". He said "one of our "comrades" fell overboard and may be hurt and wandering around looking for help.

At that time, I felt it was in my best interest, that I tell them "No"

I knew these men were after him and I wanted to protect him.

I personally felt they were after the man.

17. The statement I have provided above is true and accurate to the best of my knowledge.

JOSEPH H. WYMAN

Sworn to before me this 1st day of November, 1985.

GEORGE PIVACH, II
NOTARY PUBLIC, PARISH OF PLAQUEMINES, STATE OF LA
MY COMMISSION IS ISSUED FOR LIFE

#6

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

JAN 13 1 39 PM '86
LORETTA G. WHYTE
CLERK

MYROSLAW WASYLOWYCZ MEDVID, ET AL VERSUS NEW ORLEANS POLICE DEPARTMENT, ET AL	CIVIL ACTION NO. 85-5065 SECTION "F"

Transcript of proceedings taken in the above numbered and entitled cause before the Honorable Martin L. C. Feldman on November 6, 1985.

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20

FOR THE DEFENDANTS:

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REPORTED BY: TONI DOYLE TUSA, C.S.R.
OFFICIAL COURT REPORTER

INDEX

PAGE NO.

JOSEPH H. WYMAN

DIRECT EXAMINATION 13
CROSS EXAMINATION 32
REDIRECT EXAMINATION 37

WAYNE EDWARD WYMAN

DIRECT EXAMINATION 43
CROSS EXAMINATION 57

IRENE PADOCH

DIRECT EXAMINATION 60
CROSS EXAMINATION 95
REDIRECT EXAMINATION 96

THOMAS M. RICHARD

DIRECT EXAMINATION 99
CROSS EXAMINATION 103

MICHAEL STEPHEN FLAD

DIRECT EXAMINATION 105
CROSS EXAMINATION 125
REDIRECT EXAMINATION 126

RAYMOND HAROLD GUTHRIE

DIRECT EXAMINATION 133
CROSS EXAMINATION 135

MR. JOSEPH WYMAN was called as a witness, and after having first been duly sworn, was examined, and testified on his oath as follows:

THE CLERK: Step this way, please. Let me remind you, you are still under oath. Would you be seated. State your full name and correct spelling.

THE WITNESS: My name is Joseph H. Wyman. W-Y-M-A-N is the last name. J-O-S-E-P-H is the first name.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. WOLF:

Q. Where do you live, sir?

A. I reside in Belle Chasse, Louisiana, at 717 Belle Chasse Highway South.

Q. Have you been in this area for long, sir?

A. All my life.

Q. What is your profession, sir?

A. Right now I'm a retail jewelry manufacturer and own a jewelry store in Belle Chasse.

Q. What did you do before that?

A. Before that I was in the contracting business, and before that I was a Jefferson Parish Sheriff's Deputy.

Q. Now, where is your jewelry store, sir?

A. It's located in Belle Chasse, on the main highway, 348 Belle Chasse Highway South.

Q. Who runs that store with you?

A. I own the store.

Q. Do you have other employees there?

A. Yes. I have other employees, my nephew Wayne Wyman, who works as a jeweler.

Q. I would like to call your attention, sir, to October 24, 1985. Do you recall that evening?

A. Oh, yes, quite clearly.

Q. What day of the week was it? Do you remember?

A. It was a Thursday evening.

Q. What were you doing that evening around seven-thirty?

A. Well, I came back to the shop to close the shop up. My nephew, Wayne, was working late. And as we closed the shop up and he was getting in his car, a men came running frantically down the parking lot towards my nephew. In fact, he ran right up to my nephew's face, and it kind of got me unnerved a little bit because, being in the jewelry business, you have to be careful.

My nephew then asked me, "Uncle Joe, come over here. I can't understand a word this man's saying. He's speaking in a foreign language."

And that's when I walked over to see what was going on. And the man was all -- really, "scared" is the proper way to say it. And he kept just running on, you know, and speaking -- then I could pick up the language a little bit and see he was speaking like an Eastern Bloc, Your Honor, type language.

Q. How long would you say that went on there, that attempt to communicate with him?

A. When I first got up there, I tried to reassure the man by putting my hands on his shoulders to calm down and see if I could help him, see what was wrong, and that went on for about four or five minutes. And he kept running on, I mean, just blurting out language.

Q. What was his appearance, physically?

A. Well, he was dressed in like a brown shorts and he had on like sneakers with black socks. And he had like a blue pullover shirt and he was soaking wet.

Q. Do you know how he got wet?

A. Well, it wasn't raining that evening. And evidently, you know, after talking to him for a few minutes, I noticed he was carrying a container in his hand, a brown jar, and it appeared that he had jumped ship.

Q. Could you tell what was in the jar?

A. No, I didn't see what was in the contents of the jar. My nephew did and told me later what it was.

Q. So would you please continue, then, with this conversation you were having with him?

A. I tried to find out what the man wanted, because I could see he seemed really upset and really scared at the moment. So I tried to reassure him. I put my hand on his shoulder and tried to calm him down a little bit, and he started blurting out again. The only words I could pick up to understand were "Novi Orleans." And I mentioned "New Orleans" and he nodded yes.

Then at that time I started talking to my nephew and I said, "This man looks like he wants a ride to New Orleans." And at the whole time I am looking at my nephew he keeps looking back south where he came from. I said, "Wayne, it looks like this man might want a ride to New Orleans." I said, "You are Russian?" And he said, "Ukrainian."

Q. You were gesturing he pointed to his chest and said, "Ukrainian"?

A. Yes. The same thing he did, he put his fist on his chest.

Q. Making emphasis?

A. Making emphasis.

Q. Is this located close to the river?

A. My shop is parallel with the highway, which is parallel with the river, about a block and a half from the river.

Q. Please continue.

A. And at this point he mentioned "policia," at that point, which I can understand to mean police, being an ex-policeman and heard this word before from other seamen when I worked for the Jefferson Parish Sheriff's Office. So I asked the man then, I said, "You, New Orleans?" And he nodded, again, yes. Then I started talking to my nephew about it and I said, "Wayne, it looks like this man just jumped ship. He's a Russian seaman. And the way he jumped ship, he's in trouble. It looks like this guy may be, based on my past experience, might be trying to defect or something."

So I asked him -- I said, "You" and I pointed to him, put my hands on his shoulders, and he was calming down a little bit. He was still really scared. And I said "You defect New Orleans" and he nodded yes, but I don't know if he understood the word "defect." I know he responded to New Orleans because he responded to that once already.

Q. But you did say, "You defect New Orleans," and he nodded?

A. He nodded in the affirmative, yes.

Q. What happened next?

A. I then asked my nephew -- I said, "Wayne, it appears this man wants to go to the New Orleans Police," because that's what we could ascertain at the time he was talking about. I said, "Wayne, would you give him a ride to New Orleans, where he wants to go?" And Wayne said, "Sure." Because I said, "If you don't, I will." He said, "Sure. I'll take him where he wants to go." I said --

MR. LINHARDT: Again, the witness is telling a lot of what his nephew said, and that's impermissible.

THE COURT: I'm going to permit it under the circumstances. The objection is overruled.

BY MR. WOLF:

Q. Sir, I was trying to understand the last statement you said.

A. When I asked my nephew, Wayne -- I said, "Wayne, would you take this man to New Orleans?" And Wayne said, "Sure, I will." I said, "Well, if you won't, I will."

Q. Is that what then happened?

A. Yeah. He then -- I told Wayne -- I said, okay, go ahead and take off then, go ahead and take him to New Orleans, where he wants to go. So Wayne got in his car and I motioned for the man to get in the car, and I mean he jumped in the car. He almost landed on my nephew's lap he was so glad to get in the car.

About that time,

when they pulled off and went up the street -- you know, they were only gone a couple of minutes. That's when I went back to the shop to make sure the store was secure, the alarm system was on and everything. And I noticed, when I was walking back towards the door, across the street were three men walking down the sidewalk. And when I went and checked on the door and turned around, they were in the parking lot then and three of them -- it was three men, and two of them kind of stayed back about fifteen, twenty feet away and one came up to me. Two of the guys were good-sized fellows. They were well over six foot tall and kind of muscular.

Q. How were they dressed?

A. They appeared to be in street clothes. Remember, now, it's dark. It's around eight-thirty, something like that. So the lighting is not too good out there. They appeared to be in street clothes, not in uniforms. One of the guys came up and spoke to me. He spoke good English. But I know he was a foreigner, though. There is no doubt in my mind because of the way he was talking.

He asked me did I notice anyone wandering around and I asked him why. He said, "We are looking for one of our comrades that fell off the ship and may be hurt and he may be wandering around looking for help. That's when I surmised right then and there that they were looking for him and that there was no doubt in my mind, at that point, that the man was definitely trying to defect.

MR. BAITY: I'm going to object to that conclusion.

THE COURT: Sustained.

BY MR. WOLF:

Q. Please continue, sir. What happened next?

A. After I talked those couple of minutes, I told him no. He walked backed towards the other two men. All three of them got together and they huddled there for about three or four minutes, and then they just walked back across the street and went back south where they came from.

Q. What happened next of this matter?

A. Well, after that, that's when it gets really crazy after this. My nephew, of course, took him to New Orleans and brought him to the New Orleans Police and then, like I say, things happened in the car.

Q. How long was he gone? Did your nephew return to the store?

A. No. No. I saw him the next morning and he went over a bunch of things with me, what happened in the car and everything like that. After that Immigration came in and took statements from me. That was Monday, the following Monday.

Q. Who came to see you?

THE COURT: What date would that have been, Mr. Wyman? This was a Friday?

THE WITNESS: Well, it happened on a Thursday night, Judge. It happened Thursday night, and then Friday went by, Saturday went by, Sunday went by, and then Monday came up.

BY MR. WOLF:

Q. It would have been the twenty-eighth of October, the Monday after the twenty-fourth?

A. Right.

Q. Who came to talk to you from INS?

A. Mr. McMann.

Q. McMann?

A. A senior INS official. He was out of Dallas, he told me.

Q. What did he say to you?

A. Well, he wanted to come in and take a statement of what happened. And we had two pieces of physical evidence that they took. One was an envelope in the car that he had wrote on, the seaman had wrote on, and he wrote on there and they wanted that, definitely wanted that. They took and gave copies back to me.

Q. Let me ask you something while you're on that subject.

MR. WOLF: Judge, I would like to show this witness one of the exhibits in the petition and ask him if he can identify that as the object he gave this INS official. May I have the petition?

THE COURT: Yes. I'm sorry. I have it.

MR. WOLF: I am referring to Exhibit D, plaintiff's petition and complaint.

BY MR. WOLF:

Q. Mr. Wyman, can you recognize this Exhibit D?

A. Yes, I can. This is the photostatic copy that we have of the piece of paper -- what this is is a back of a phone bill that my nephew had laying on the seat of his car. And the man in the car asked to write on something --

Q. So that's the document you're referring to that you gave the INS official on the twenty-eighth?

A. Yes. Also, we gave them a brown jar that the seaman had, he had left in my nephew's car.

Q. What was in the brown jar?

A. Well, I didn't see the contents. My nephew did, but he told me that there was --

MR. BAITY: Objection.

THE COURT: Sustained.

BY MR. WOLF:

Q. Did you give anything else to the INS officials?

A. No. Just our statements stating what happened.

Q. Did you tell the INS official, Mr. McMann, on the twenty-eighth the same story you just told us?

A. Yes, I did.

Q. What else did the INS official tell you? Did he tell you anything substantive at that time?

A. Well, he told me some things that I wasn't supposed to elaborate on.

Q. What did he tell you?

A. Because I asked him point blank.

THE COURT: Mr. Baity, are you rising or are you deciding to rise?

MR. BAITY: He's going to say what he said. I have no objection to that. But if he's going to testify what the INS agent told him -- and I understand the purpose of the questions asked -- I'm going to make the objection that it's hearsay.

MR. WOLF: Admission of a party litigant --

THE COURT: I'm going to permit -- well, it might well be an admission, but I'm going to give some latitude to the witness's testimony under the circumstances. This is, after all, not a jury trial and I'm going to -- I'll consider it for its probative effect. All right. Go ahead. Repeat the question.

BY MR. WOLF:

Q. Please go ahead, Mr. Wyman, and tell us what the INS official told you.

A. After he took my statement, I was concerned because I was concerned for this young man. When I found out they brought him back to the ship after all this happened, I asked him point blank, "What's going to happen now to the seaman?" It appeared to me that the man was trying to defect to the United States. He said, "By the evidence presented to me -- right now, from here, I'm going to the ship." He says, "It definitely looks like a case of defection to me."

Q. Did he tell you anything else of substantial nature?

A. He said that it's already up to the top in Washington, to the President, and everybody's very concerned about the matter and they're really getting on it now. He said something will be done.

THE COURT: What time of day was this?

THE WITNESS: This was approximately noon, Judge.

BY MR. WOLF:

Q. Was that basically the substance of the conversation you had with Mr. McMann?

A. Yes, sir. And, you know, he made some phone calls.

Q. Do you know who he called?

A. No. It appeared to me he talked to somebody of importance, though, because he said, "Yes, we have the statement concerning the Russian seaman and it looks like he is trying to defect. We have enough evidence now to substantiate that."

Q. What did Mr. McMann do then?

A. He then asked me not to comment on some of the things that we talked about.

Q. Which ones?

A. About the evidence and stuff like that.

Q. About the defection?

A. Right, un-huh. And from there they also had a detective there. Dominick Verdi also was in the room.

Q. A detective was there at the time with Mr. McMann?

A. From Plaquemines Parish Sheriff's Office.

Q. What were you saying about him?

A. He was also there when they did the statement.

Q. And that detective's name was what?

A. Dominick Verdi.

Q. Did Mr. Verdi make any substantive communications to you on the subject of the seaman?

A. Yes. He kind of was -- expressed concerned because it did happen in Plaquemines Parish. And he was representing the Sheriff's Department and the district attorney's office because they were very upset. And Mr. McMann told somebody he was talking to on the phone that the district attorney in Plaquemines was very upset about the whole set of circumstances.

Q. What were they upset about?

MR. BAITY: I believe that's beyond the leeway the Court granted.

THE COURT: Sustained.

BY MR. WOLF:

Q. Please continue, then. Did anything of note happen then in that interview?

A. Other than what I just said, that's about it.

Q. Were you approached again by any other officials and questioned? And I stress "officials." I'm sure everyone on the street has been talking to you. Did officials of the United States government or the State of Louisiana approach you thereafter?

A. No. No one has came back to me and said, "Hey, this is the picture of the gentleman involved," or this is the gentleman they interviewed. In fact, when I seen a picture in the paper of the Times-Picayune, they had a picture supposedly of Medvid going on the ship. The far right is the seaman, Medvid, and I seen that picture and I says, "That's not Medvid." And I called, then, the number that McMann had left and asked them -- he wasn't there and some

Border Patrol agent came on the phone. And I said, the picture they show in the paper is not Medvid, and he said, well, we are checking that out. It seemed like the paper may have taken liberties with the photograph and stated incorrectly that that was Medvid.

Q. What day did that come out, that Picayune?

A. That was Wednesday. That would be after I had been given the statement.

Q. The following Wednesday after the Monday, which would probably be October 30th?

A. Yes, just before Halloween.

THE COURT: Mr. Wyman, how do you know that the individual who confronted your nephew on the night of October 24th was Mr. Medvid?

THE WITNESS: Well, we don't know the gentleman's name. He tried to tell us his name, but it was in Russian and we couldn't understand it. I would like to see a picture.

THE COURT: I'm only interested in how you knew that he was the seaman.

THE WITNESS: Well, they said in the paper this was the seaman in question, this was supposed to be the seaman that jumped ship, and I was just saying that picture of that man was not the seaman we seen Thursday night.

MR. WOLF: On that point there --

Excuse me, Judge. Was I cutting you off?

THE COURT: No. When you cut me off you'll be the first to know.

MR. WOLF: Mr. Wyman, before we continue asking you about your reaction to seeing the photograph in the paper, will you attempt to give me a personal description of this person, this wet foreign-language speaking person you dealt with on Thursday evening, October 24th? What did he look like?

A. Well, he was a young man. He appeared to be around twenty-five. He stood approximately six foot, maybe five eleven, weighed about a hundred sixty, a hundred seventy-five pounds, again, dressed in brown shorts, blue pullover type shirt, sneakers, black socks, nice looking young man, clean shaven, short hair. It was at night. It looked like it was a brownish blonde, is the best I can describe it. If you would see him walking down the street right now, you would not think of any other person who looked the same way.

Q. He was ordinary looking?

A. Yes.

Q. Do you think you would recognize him if you saw him today?

A. Yes, I would.

Q. What color hair did he have?

A. Sort of a brownish blonde.

Q. What hair style?

A. Well, his hair was wet, clinging to his head.

Q. Was it long?

A. It didn't appear to be long.

Q. Did he have any facial hair?

A. No. He looked like clean shaven, no moustache.

Q. Could you say the general shape of the face was oval or rectangular?

A. Sort of oval.

Q. Were there any other physical characteristics that you could communicate to the Court right now that would help us in understanding what he looked like?

A. No. He was light skinned. Other than that, like I say, he was just a nice looking young man.

Q. Now, back to this picture that appeared in the Picayune that next Wednesday, I believe, did you say that the picture showed four persons? How many people were in the picture?

A. They showed, I think, four people in the picture, all together, and they had about -- like on the side of the ship they had a gangplank type thing that goes up for the people to walk on, going up to the ship, and they had three men at the bottom and they had another man with a white-like sweater on, a beard and long hair, and of course that's when the caption said that this was the seaman.

Q. You said a man with a beard and long hair was the seaman?

A. Well, they said the man far to the right, and that was the man far to the right.

Q. Did any of the people in the picture appear to be the seaman you saw Thursday night?

A. No.

Q. Is it possible that some of those people were -- was their appearance so clearly expressed in the picture that you would be able to tell?

A. The only one I couldn't tell in the picture was the second man. He had his head kind of turned a little bit, and you could only see basically a side view of the face. But he appeared to have a little bald head, anyway, so I don't think it was him anyway.

Q. So you're saying you can't say for sure that Medvid or the seaman you saw Thursday night was not in that picture?

A. By my recognition, looking at the picture and remembering him, I would say he's not in the picture.

Q. But you could be mistaken on that?

A. Right, the only one would be the second man, and he had a coat and pants on.

THE COURT: All right, counsel. Summit conferences are not going to take place at that counsel table.

BY MR. WOLF:

Q. One more question on that picture you saw in the Picayune. What did it purport to show again?

A. It was supposed to show that the man in the far right, at the picture, is the Russian seaman, Medvid, and that gentleman right there was not the man.

Q. Was it purporting to be a picture of the scene when he was returned to the vessel Thursday night or several days later?

A. No. This was several days later. This was the photograph when they took him back to the ship after he had supposedly signed that document to go back to the ship and they were returning him to the vessel.

MR. WOLF: Thank you. We tender the witness.

THE COURT: Thank you, Mr. Wolf.

Cross examine, Mr. Baity.

CROSS EXAMINATION

BY MR. BAITY:

Q. Mr. Wyman, how long were you a Jefferson Parish deputy?

A. From 1966 to 1969.

Q. And I take it it's about a twenty-five, twenty, twenty-five minute ride from your jewelry store down to New Orleans. Is that correct?

A. Maybe a little bit longer, depending on the traffic.

Q. And I would take it there's a Plaquemines Parish Sheriff's Office somewhat closer to your store?

A. Very close to my store, yes.

Q. Now, you've indicated you've had some prior experience with seaman when you were a deputy sheriff.

A. Right.

Q. Have you had experience with Border Patrol?

A. Not too much with the Border Patrol.

Q. Did you have any experience with the FBI?

A. No.

Q. Did you ever deal with foreign seamen when you were a Jefferson Parish deputy?

A. Just a few times we would get complaints in bars that they would be carrying on too much or something like that.

Q. Mr. Wyman, when you saw this man on that night, I take it the only thing you understood him to say was basically New Orleans and police. Is that correct?

A. Right. That's the basic two things.

Q. And I take it you did not instruct your nephew to take him to the closer Plaquemines Parish Sheriff's Department. Is that correct?

A. No, because the man seemed that he was emphatic about going to the New Orleans Police Department.

Q. And I take it, as a former police officer, you did not see fit to call the FBI. Is that correct?

A. Right. Because the man looked like he had something pre-arranged. That's the idea I got in mind. I didn't want to go messing it up by taking him to some place he didn't want to go.

Q. So you were thinking he wanted to go to New Orleans Police, but not to the FBI?

A. That's the impression I got from the gentleman, yes.

Q. Now, I take it also that you don't speak Ukrainian or Russian. Is that correct?

A. No.

Q. Mr. Wyman, were you interviewed by the Times-Picayune recently?

A. They called me on the phone, yes.

Q. Did you talk to them?

A. Yes.

Q. When was that? Do you recall?

A. I've talked to so much news media in the last week and a half, I couldn't even begin to tell you.

Q. Wasn't there a recent article concerning this incident and testimony with the Times-Picayune in last Sunday or so? Does that sound familiar?

A. I believe it was the last few days.

Q. Let me ask you this. I heard your discussion of the physical examination, etc. You didn't come to the FBI or to Border Patrol or INS or tell the Times-Picayune, then, about the fact that this was a different sailor, did you?

A. Well, the thing I'm trying to say is nobody came to me, to answer your question, and said, "Look, is this the seaman or the man that you had Thursday night?"

THE COURT: The question is why didn't you tell the Times-Picayune, during that interview recently, that the picture that they indicated was of the seaman was not the seaman who you met in front of your jewelry store on that Thursday?

THE WITNESS: I told that to the Border Patrol, and the Border Patrol told me that the paper had taken liberties with the photograph and that the man in the picture was the Russian doctor off the ship. That's why, to answer your question.

BY MR. BAITY:

Q. Mr. Wyman, I think I understand your question, and not to belabor the point, though -- however, your testimony today is that you were not convinced, and you gave a statement, yourself, to the Times-Picayune and indicated your concerns and you didn't relate that information then, did you?

A. You're getting me all confused here. Would you begin again? The first question you asked me was about the man in the photograph, correct?

THE COURT: Maybe I can ask it again. I ask great questions.

Your interview with the Times-Picayune was fairly recent?

THE WITNESS: Yes, sir.

THE COURT: Your interview with the Times-Picayune was after you observed that the picture of the person in the newspaper was not the same person you met?

THE WITNESS: Right.

THE COURT: Why didn't you tell that to the Times-Picayune in your recent interview?

THE WITNESS: Because I felt when they told me that they had taken liberties with the photograph, which happens, I said, well, it wasn't that important anymore because they said that was -- what I'm trying to say is that they said they took liberties with the photograph and it wasn't the man in the photograph. That was the ship's doctor.

BY MR. BAITY:

Q. Mr. Wyman, on the evening that you met the individual that came up, you were told subsequently, I understand, that this person had fallen overboard, by someone else. Is that right?

A. Right.

Q. The person you talked to never used the word "defect," did they?

A. You're talking about the Russian seaman?

Q. Yes. Or the seaman that you met that was wet.

A. He didn't say it in English. If he said it, he didn't say it in English.

MR. BAITY: I have nothing further, Your Honor.

THE COURT: Thank you, Mr. Baity.

Any redirect, Mr. Wolf?

MR. WOLF: One more, Your Honor.

REDIRECT EXAMINTION

BY MR. WOLF:

Q. Mr. Wyman, you just mentioned that you discussed or mentioned that conclusion that the man in the Times-Picayune picture was not the seaman you dealt with to the Border Patrol. When was that?

A. That was Wednesday.

Q. The day that you saw the picture?

A. The day I saw the picture. The interview with the Times-Picayune was at a later date.

Q. How did you come to be talking with the Border Patrol?

A. I called them back when I seen the pictures and said, "Wait a minute. This is not the guy."

Q. Who did you speak to?

A. I don't remember the man's name. He was a Border Patrol agent.

Q. And you said that he said that the picture in the Picayune had liberties taken with it?

A. Right.

Q. What did that mean?

A. He said --

MR. BAITY: I'm going to object. I believe he's about to call for the witness to --

THE COURT: The objection is sustained.

BY MR. WOLF:

Q. Did he describe what kind of liberties he was referring to or did he elaborate?

A. Well, he just said that the photograph in the picture of the man that's supposed to be Medvid was the Russian doctor on board the ship and that he said that the photograph they have of the gentleman is being showed to the proper witnesses that they interviewed in Algiers.

Q. The photograph had been shown to the proper witnesses?

A. That's what he told me. And I said, "Who? I'm one of the witnesses and nobody showed me a photograph."

THE COURT: What was your understanding, other than you and your nephew, of what other witnesses there were in Algiers?

THE WITNESS: I don't know, Your Honor. That's what the man told me. He said the proper witnesses are being -- because I was concerned -- can I say something?

THE COURT: I'm not interested in your concern. I'm interested in what the facts are.

THE WITNESS: Well, at the time, seeing what was going on, you know, and I seen this picture in the paper, I surmised that maybe they might have switched men. And I wanted to see a photograph of the guy they interviewed in Algiers to see if this was the same man I seen Thursday night.

THE COURT: Well, if you suspected that for some reason they switched pictures or that there was even a mistake in the identity of the individual, why wouldn't you tell some member of the press? I gather that you were the subject of great interest among the press, as you probably should have been. Why wouldn't you mention it to any member of the press?

THE WITNESS: I mentioned this at a later date. Nobody came back to me and showed me a photograph of this man.

THE COURT: When did you mention it?

THE WITNESS: This was probably Thursday or Friday.

THE COURT: This would have been the week of November 1st?

THE WITNESS: Yes, sir.

THE COURT: And your interview with the Picayune was when?

THE WITNESS: It was around that

time period.

THE COURT: Well, if you mentioned it to someone else, why wouldn't you have mentioned it to the Picayune?

THE WITNESS: Well, oh, see, the Picayune called me. They read my statement -- I didn't do a real interview with the Times-Picayune in the paper. They took my statement that I gave the lawyers here and they read from that statement. They didn't call me for an interview. They were trying to --

THE COURT: But when they took your statement, if I understand the sequence correctly, when they took your statement you had already noted that the picture of the individual in the paper was not the individual you say you met?

THE WITNESS: Right. They took my statement before -- in other words, I gave my statement before the picture came out.

THE COURT: What member of the press did you finally disclose this to?

THE WITNESS: I think it was -- Your Honor, I've been talked to by so many different news people, you wouldn't believe, and I'm just trying to remember who it was. It was one of the news media.

THE COURT: Print or television?

THE WITNESS: It was print.

THE COURT: Local or national?

THE WITNESS: It may have been the Washington Post, I think -- I'm not sure -- or Washington Times, one of those two.

THE COURT: Do you remember what the reporter looked like?

THE WITNESS: It was always phone interviews.

THE COURT: So I see. Do you remember what his name was?

THE WITNESS: No, sir. I may have it wrote down at the shop. I'm not sure.

MR. WOLF: No further questions, Your Honor.

THE COURT: Any recross?

MR. BAITY: No, Your Honor.

THE COURT: We are going to take about a ten minute recess and then we will start again. Your next witness is Wayne Wyman?

MR. WOLF: Yes.

THE COURT: The Court will stand in recess for ten minutes.

THE CLERK: All rise.

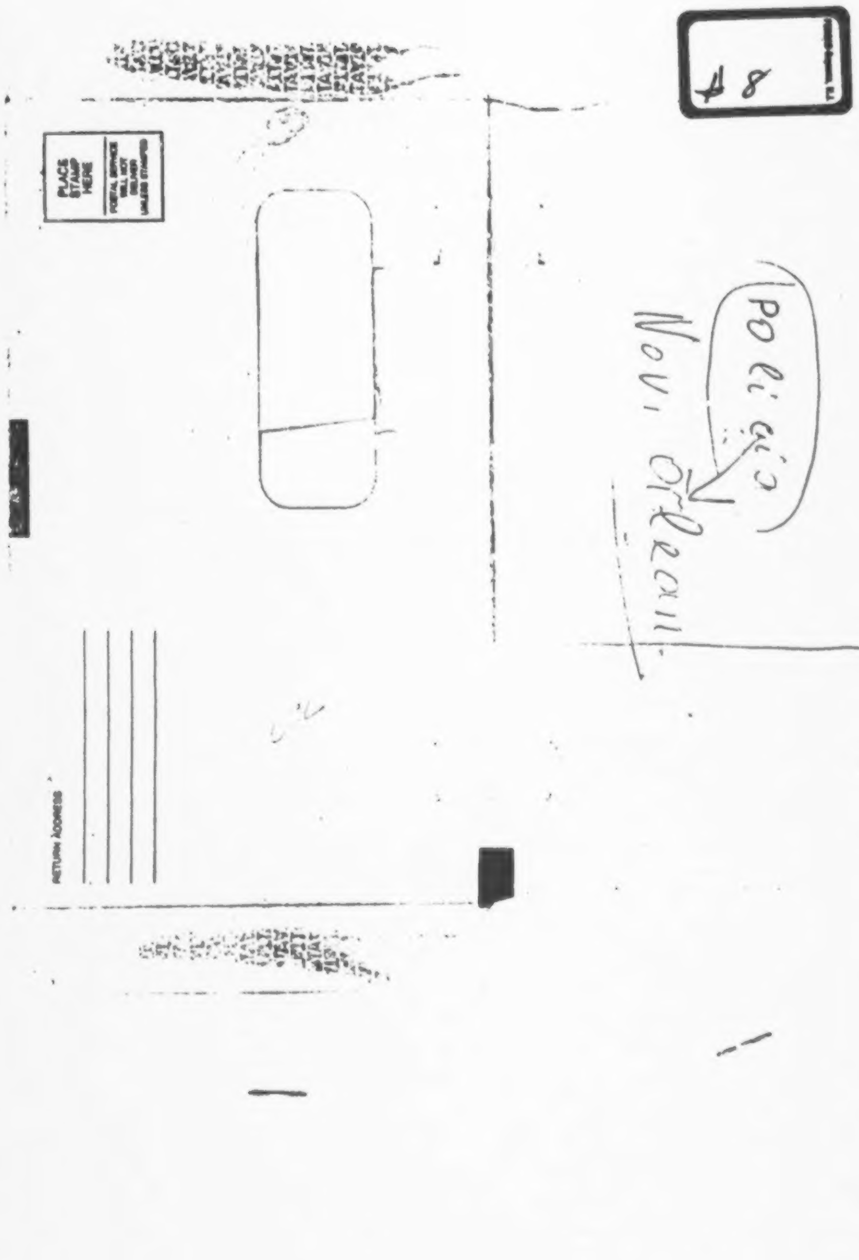
(Court briefly recessed.)

THE CLERK: All rise.

Be seated, please.

THE COURT: Call your next witness.

MR. WOLF: It will be Mr. Wayne Wyman.



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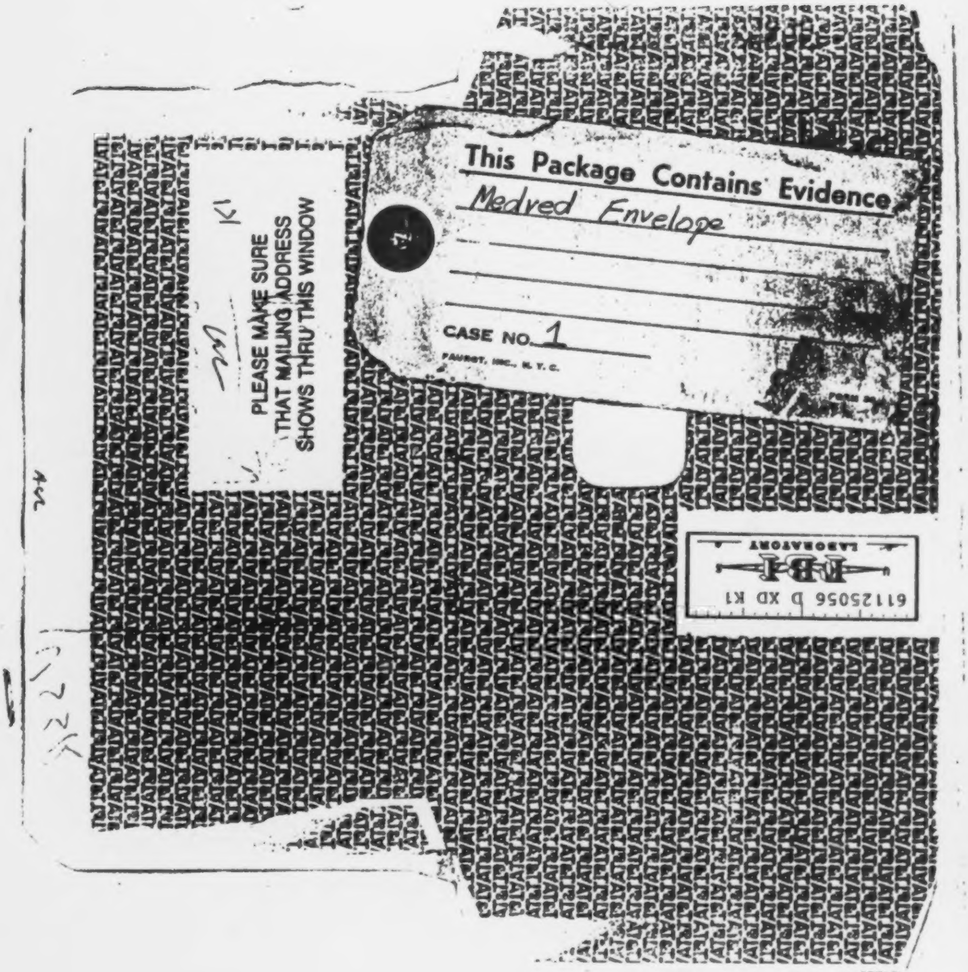

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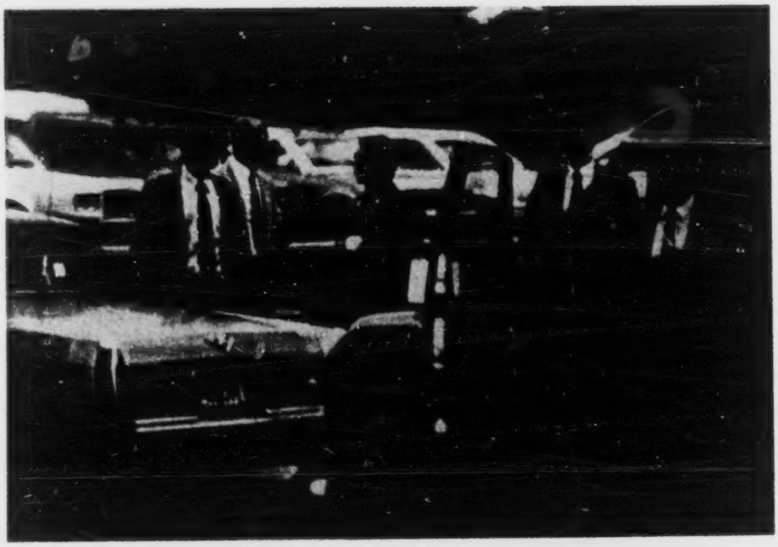

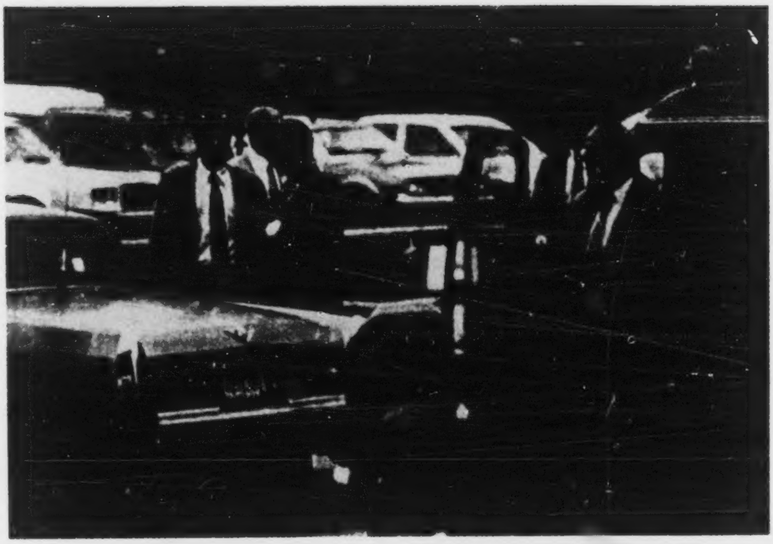

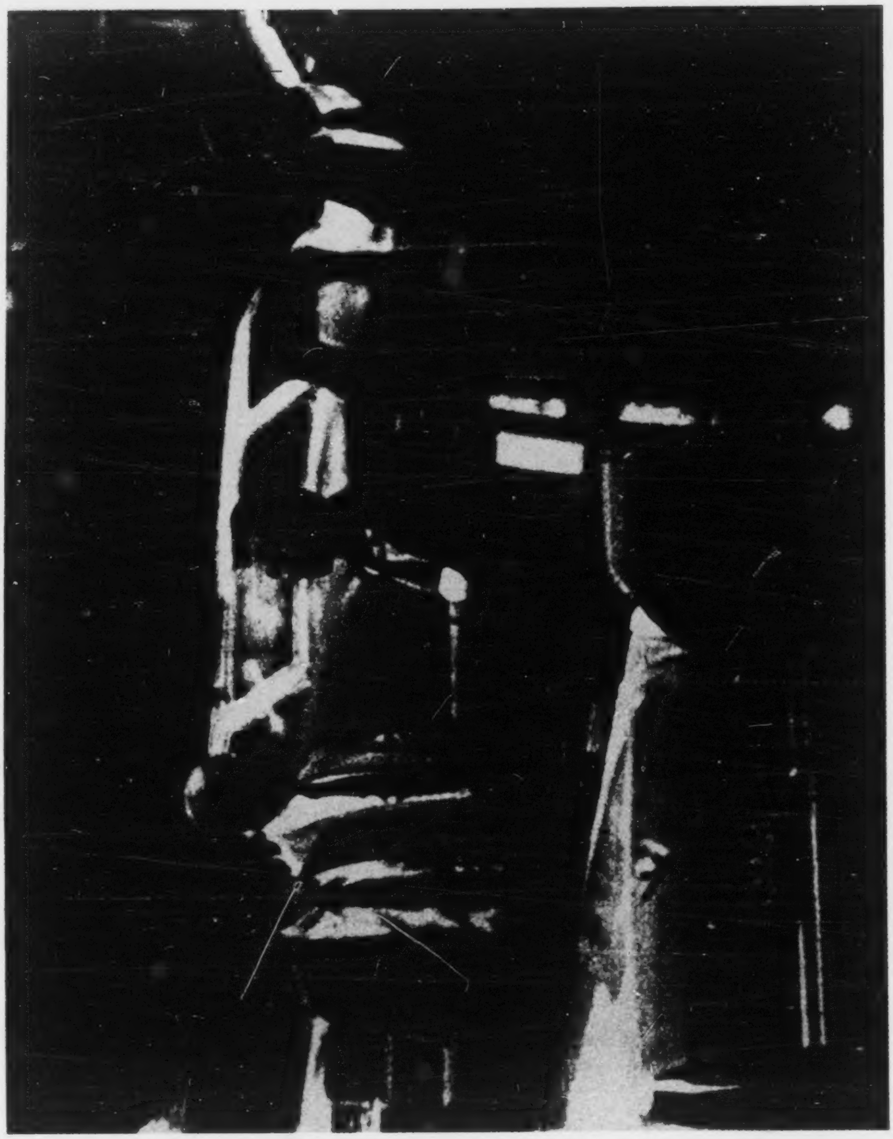

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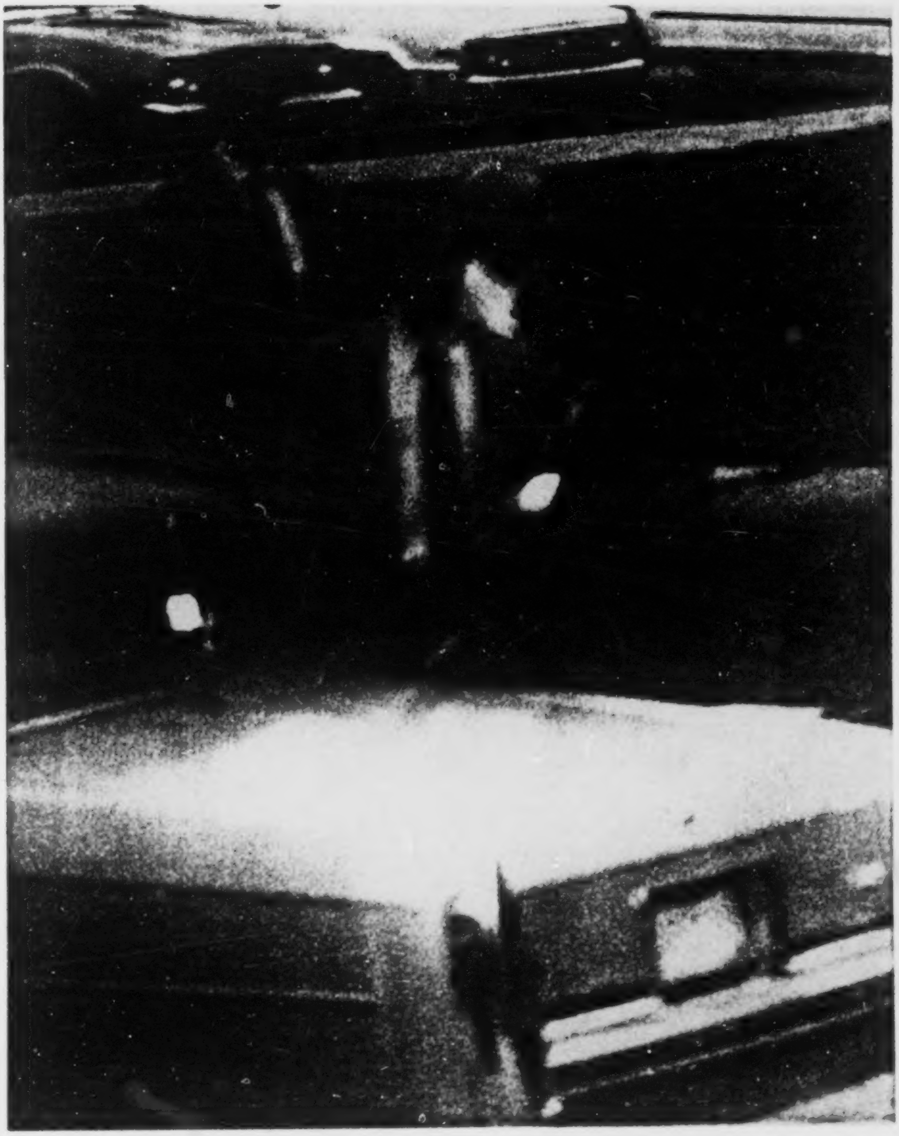

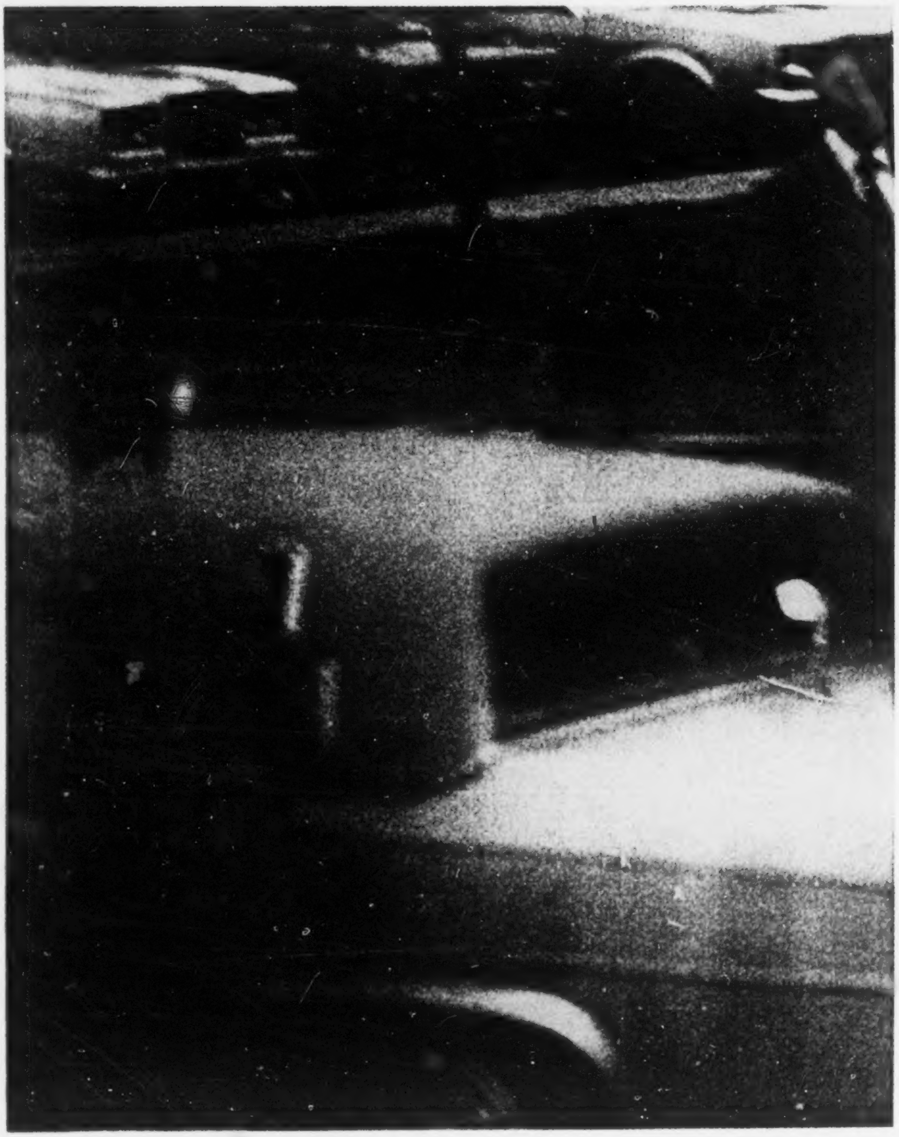

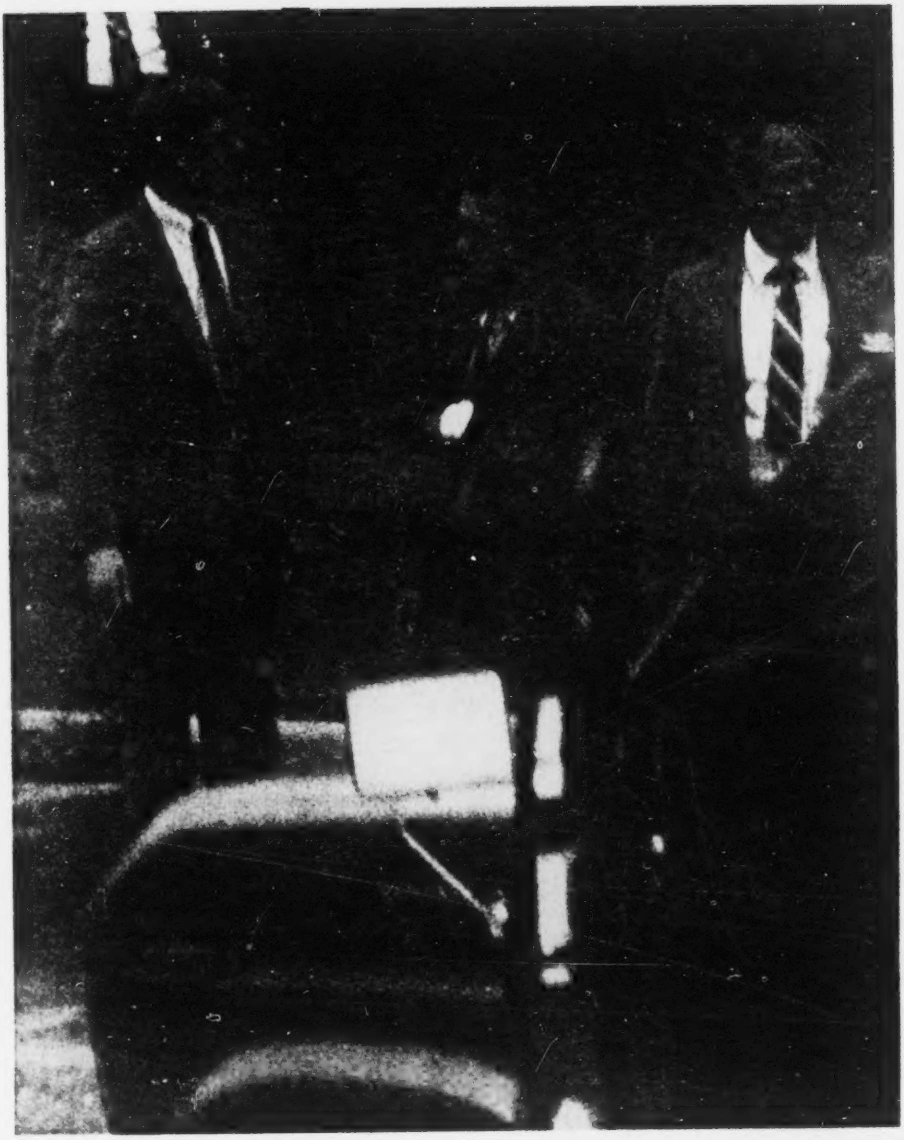

Oyman #11
ST GUARD
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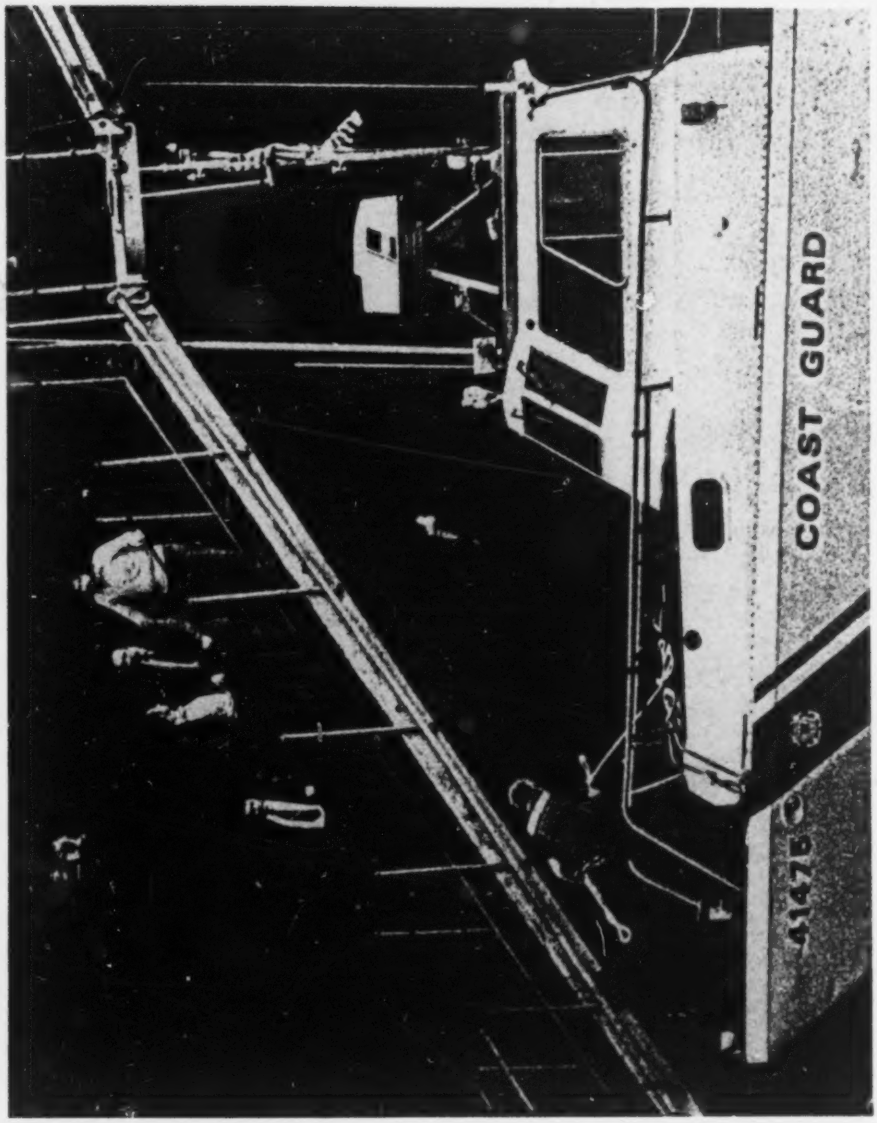
COAST GUARD
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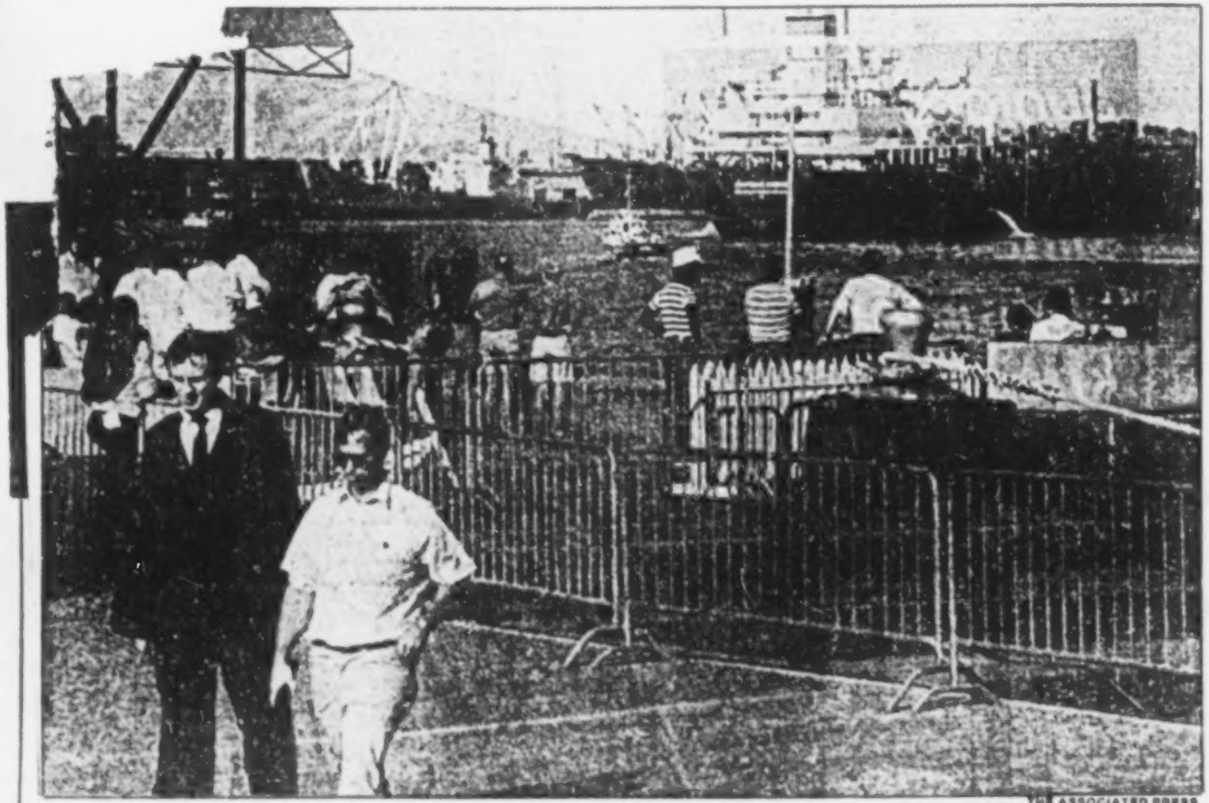


THE ASSOCIATED PRESS

Soviet dilomat Yevgeniy G. Vtyurin, in suit at left, walks away as the freighter Marshal Koniev moves down the Mississippi River

US

Wymen
#13

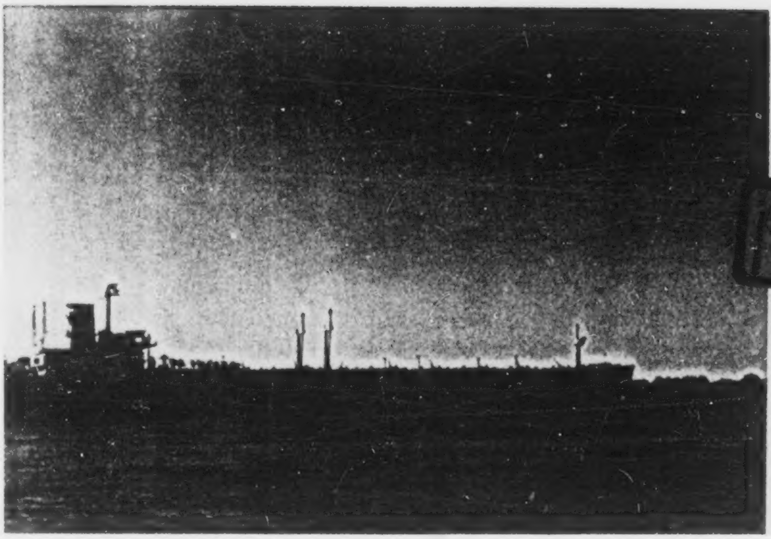
[illegible]
Square
Halftone

Smiling crewmembers stand at the railing of the Marshal Konev and listen to messages shouted to

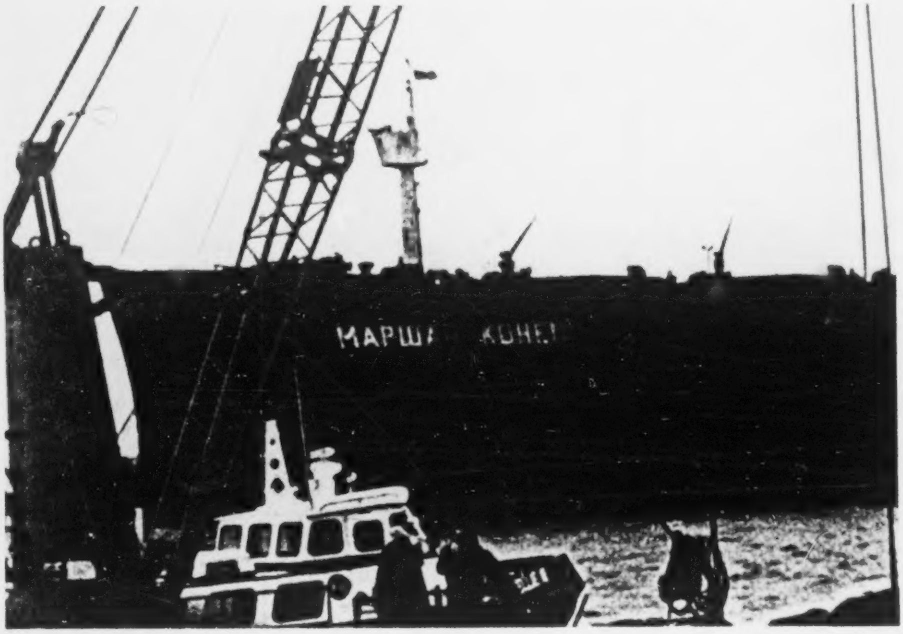
UPI PHI

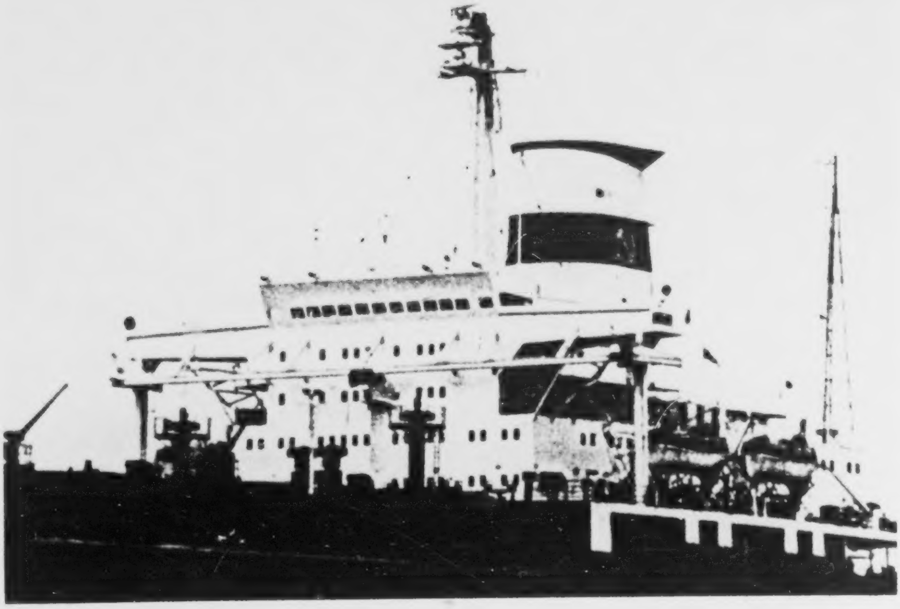
bers stand at the railing of the Marshal Konev and listen to messages shouted to them by protest

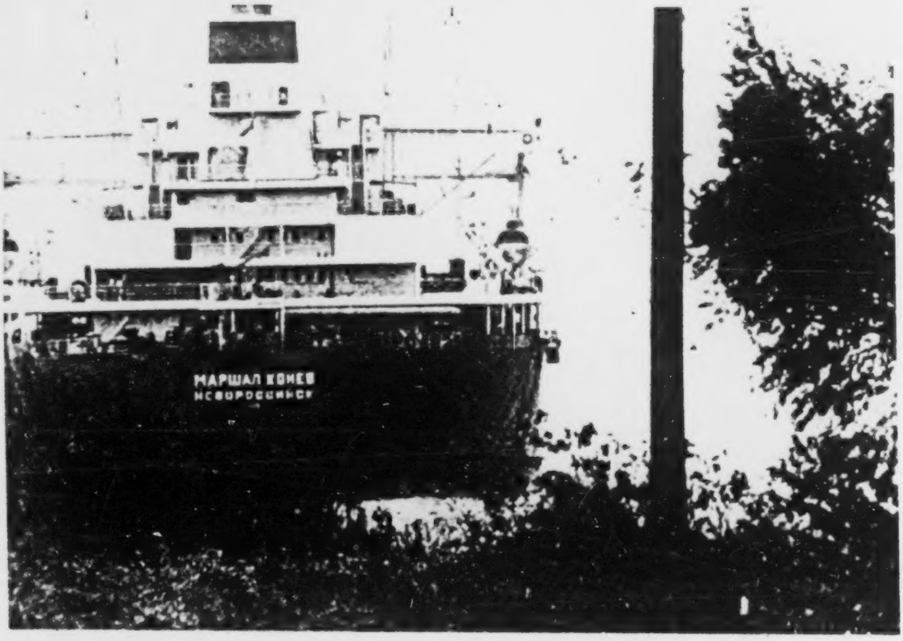
UPI PHOTO BY DAVE FORNELL

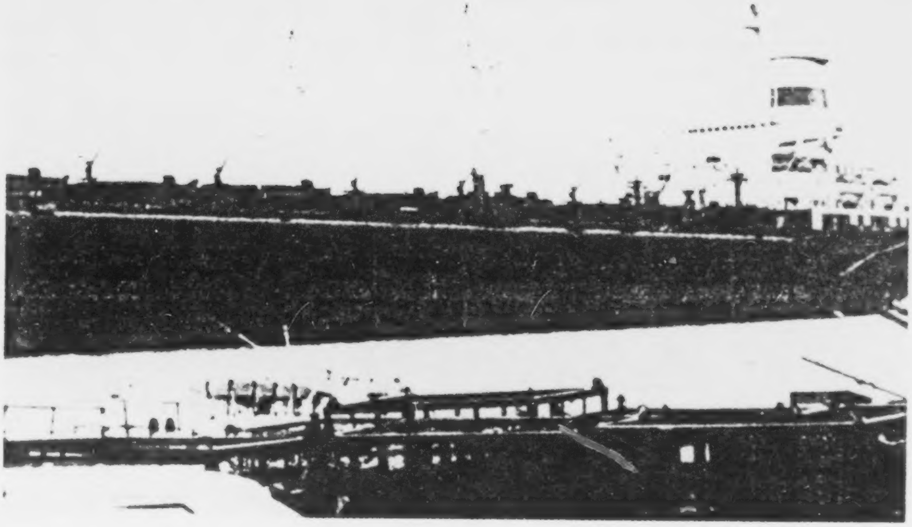


МАРШАЛ КОНЕВ

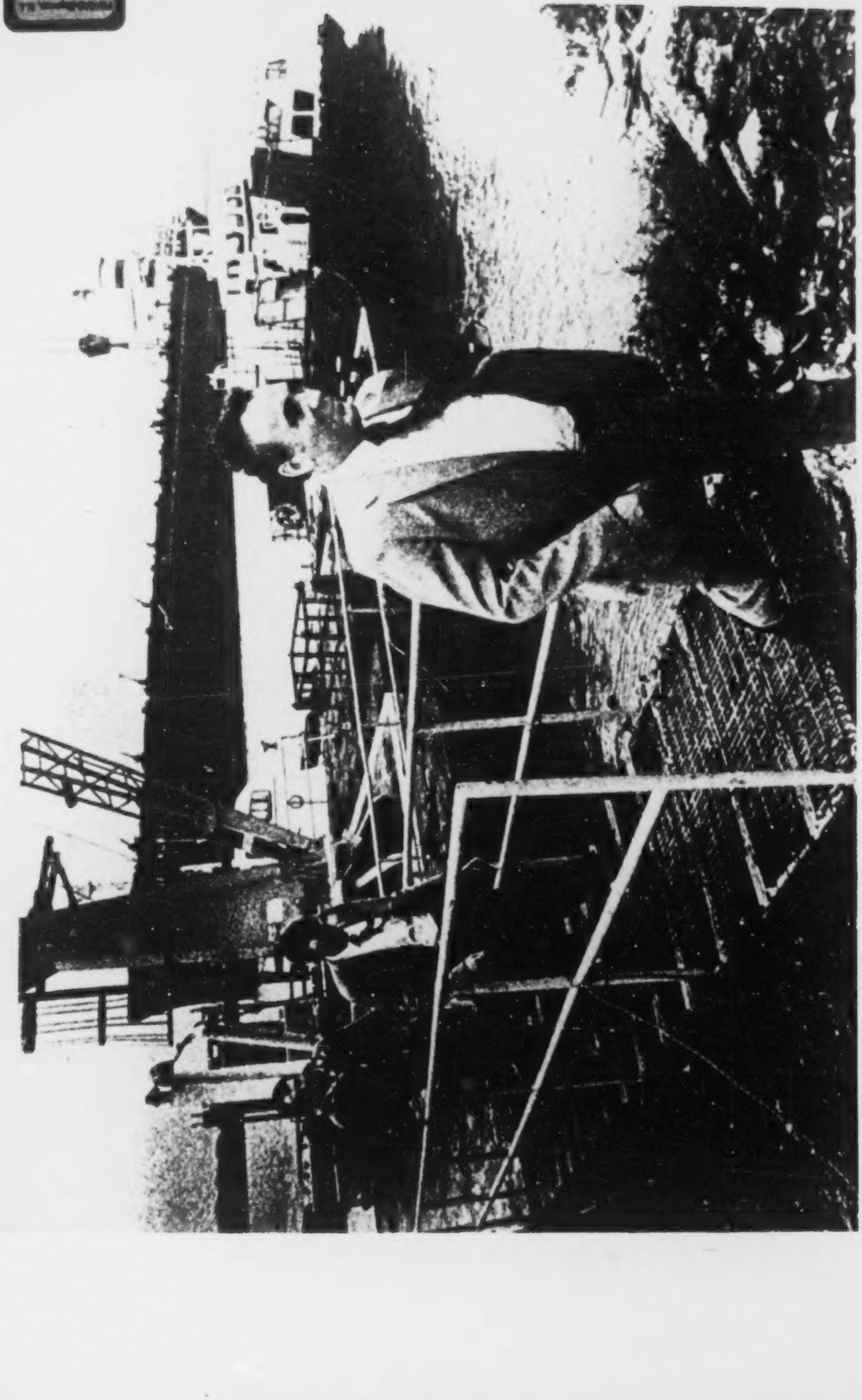

МАРША КОНЕ




МАРШАЛ КОНЕВ
НОВОРОССИЙСК



Wyman #16



the Voice of America had already several times announced that "Myroslav Medvid is not among the living any more", I was sitting in the house of his parents in the village of Siltsi, Lviv Region. I did not have to express my condolences to them, though, for Myroslav was sitting together with us, alive and joyful.

Although, there was a time when Myroslav's life was in danger. It did not take place here at home, but in America.

ducted outside the ship.

A Mexican vessel anchored nearby was chosen as a neutral territory for the negotiations. Accompanied by the doctor, the Soviet captain and a representative of the Soviet Embassy in the USA, Myroslav got on the American boat.

Suddenly the boat changed direction and headed for an American Coast Guard ship, not the Mexican vessel.

For six hours the Americans were brainwashing Myroslav Medvid. They

my return and removal of arrest from the ship, motor boats were for several days cruising around the ship and helicopters hovering over it. I asked a local longshoreman — why all those people making such a fuss. 'Not for nothing,' the man replied. 'Sponsors of the provocation pay each of them well.'"

Upon learning that among those who wanted to "free" Medvid, or rather put him in the hands of U.S. secret services, there were also some

PHOTOS: Myroslav Medvid with mother Hanna, father Vasyl, sister Iryna and grandmother Paraskovia (left photo); Ivan Lashchyk, permanent secretary of the selection commission of the Lviv University, advises Myroslav Medvid who has applied for the law department.
Photos by B. Kryshtul.

This happened on the Mississippi, when the Soviet motor vessel Marshal Konev where Myroslav was a seaman, was on the roadstead of New Orleans, USA.

In the evening of the day when the ship dropped its anchor in American waters, Myroslav Medvid went down the deck and noticed that one of the lights over the ladder was not bright enough. To find the reason, Myroslav

wanted from him at least a hint that his fall was not an accident, but an attempt to defect to the United States. All they heard from Myroslav was: "I have my homeland — the Soviet Union — and I had no intention to leave the land on which I was born and on which my parents live."

When Americans saw that psychological pressure on Myroslav Medvid had not worked, they changed the tactics.

OUNites (members of the Organization of Ukrainian Nationalists), Myroslav's 80-year-old grandmother Paraskovia could not help but express her indignation. She remembers how in the first days of the nazi occupation, Ukrainian bourgeois nationalists tortured to death Soviet activists of the village of Siltsi, how they shot 40 of its residents and threw others in a concentration camp.

Don J. Fontana, M.D., P.A.

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October 23,1986

Baranyk & Popowych, Ltd.
Mr. Orest Baranyk
710 Higgins Road
Park Ridge, Illinois 60068

Dear Mr. Baranyk:

I have had the opportunity to exam photographs of person(s) allegedly known as Miroslav Medvid. Morphologic facial skeletal comparison studies clearly indicate two different individuals existed.

I hope this information is useful to you. Feel free to call upon me, should additional information or studies be needed.

Sincerely,

Don J Fontana M.D.

Don J. Fontana,M.D.

df/pa

The events surrounding the Miroslav Medvid affair leave many unanswered questions. As a physician, I took the opportunity to review the reports of the physical examinations performed by LCDR John M. Caruthers on October 26 and 28, 1985. The findings of these reports were presented at the 1986 Annual Meeting of the Ukrainian-American Bar Association in Philadelphia. After meticulous scrutinization of these examinations, it is my opinion that there is significant evidence to suggest that either (a) two different physicians examined the patient, Medvid, or (b) two different individuals were examined. Since Dr. Caruthers testified under oath that he performed both exams, the question arises to the possibility of an imposter. To that end, I have acquired and scientifically analyzed photographs taken of the individuals allegedly known as Miroslav Medvid.

As a board certified plastic surgeon trained in the anatomic relationships of facial balance, harmony and unity, I feel qualified to assess the facial proportions of Mr. Medvid using standard and accepted methods for comparison of facial anatomy.

Full face frontal photographs were used for evaluation. It is known from the analysis of skeletal morphologyin cephalometric headplates that certain ratios seem to be present in the facial skeleton, and therefore comparison of these ratios in different individuals can act as a means of identification. Particular points are used on the face as landmarks. (Figure I)

Figure I.

TR - trichion - top of face near hairline
ME - menton - lower border of the soft tissue of chin
CH - chilion - angle of the mouth
AL - curve of alar rim
LC - lateral canthus of eye

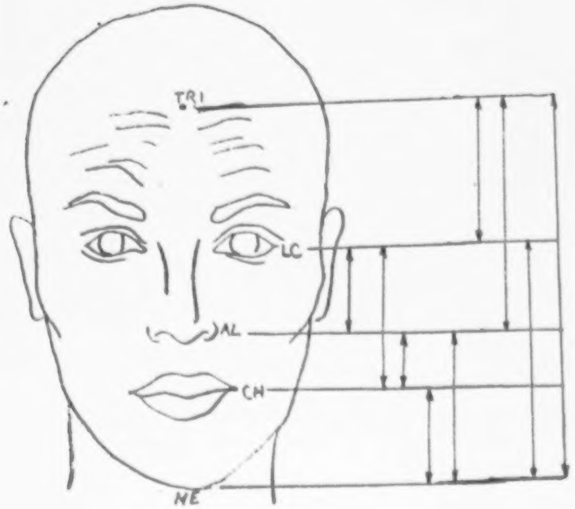


Figure I.

The following ratios were then established from measurements taken from individuals identified as Medvid. (Plates I and II).

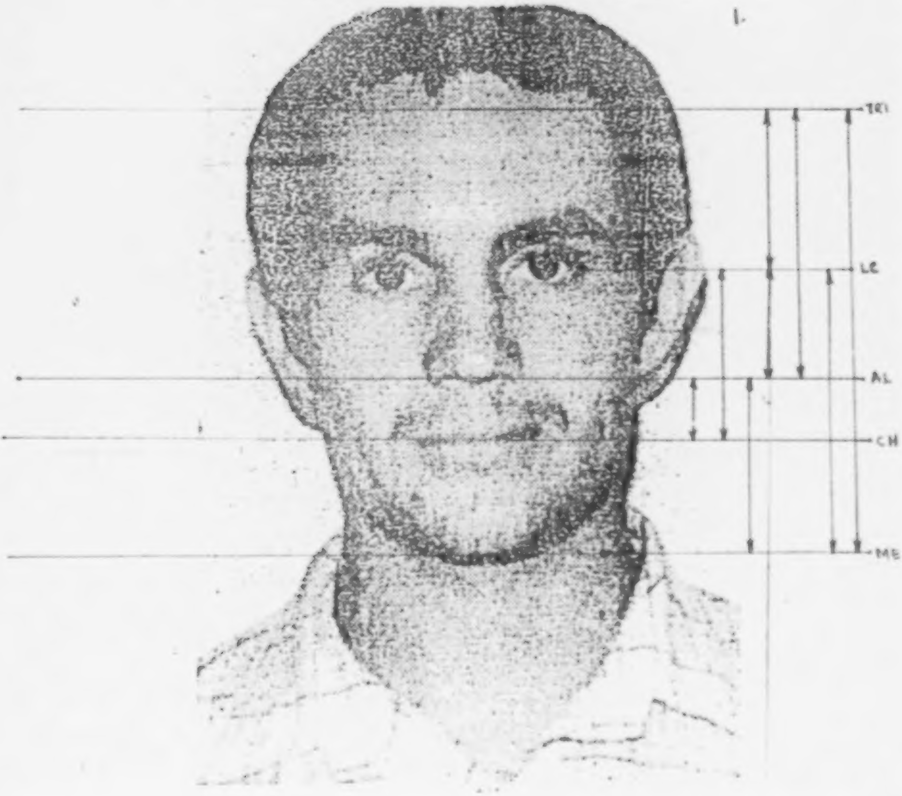
1) LC-M/TR-M
2) TR-AL/TR-M
3) TR-LC/TR-M
4) AL-M/TR-M
5) LC-CH/TR-M
6) CH-M/TR-M
7) LC-AL/TR-M
8) AL-CH/TR-M

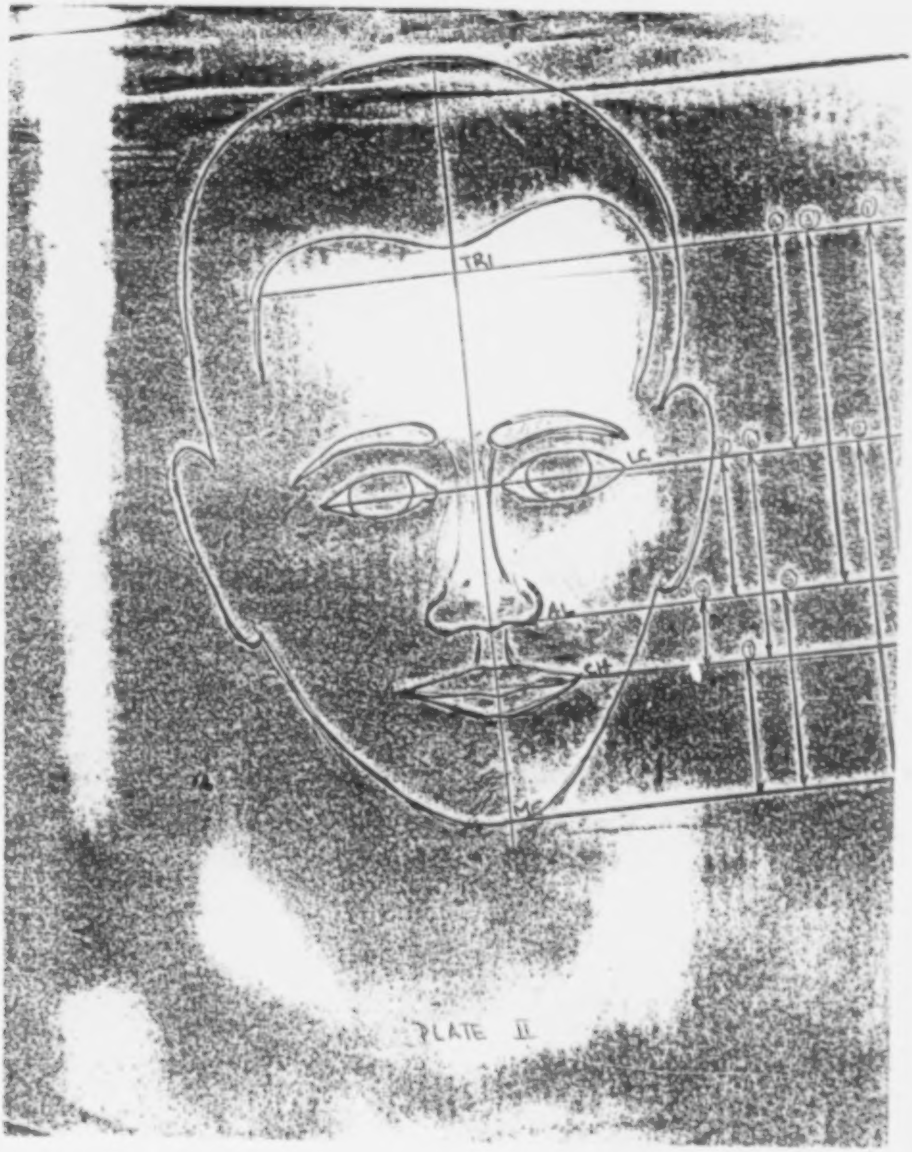
Ratio of Facial Proportions

	Medvid I	Medvid II
LC-M/TR-M	.554	.650
TR-AL/TR-M	.609	.640
TR-LC/TR-M	.380	.393
AL-M/TR-M	.386	.355
LC-CH/TR-M	.380	.372
CH-M/TR-M	.222	.236
LC-AL/TR-M	.212	.252
AL-CH/TR-M	.168	.161

The results demonstrate clearly significant differences in facial proportions between Medvid I and Medvid II. The differences are particularly apparent in the upper facial skeleton, i.e., eyes and hairline as well as in the lip, alar/chin ratios of the lower facial skeleton. One must conclude, therefore, that two different individuals were presented to the U. S. officials. This conclusion is based upon the objective measurements and morphologic differences in the individual's maxillofacial skeleton.

PLATE I


1.
TRI
LE
AL
CH
ME


TRI
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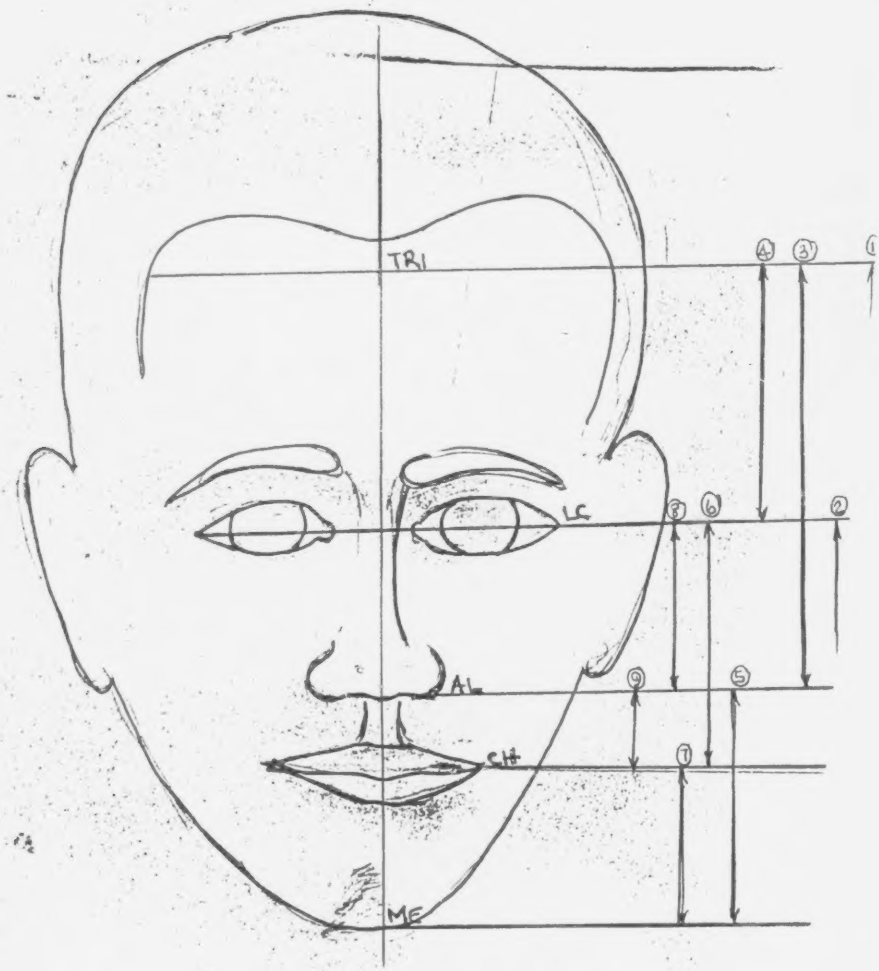
AL
CH
MC

PLATE II


TRI
④
③'
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LC
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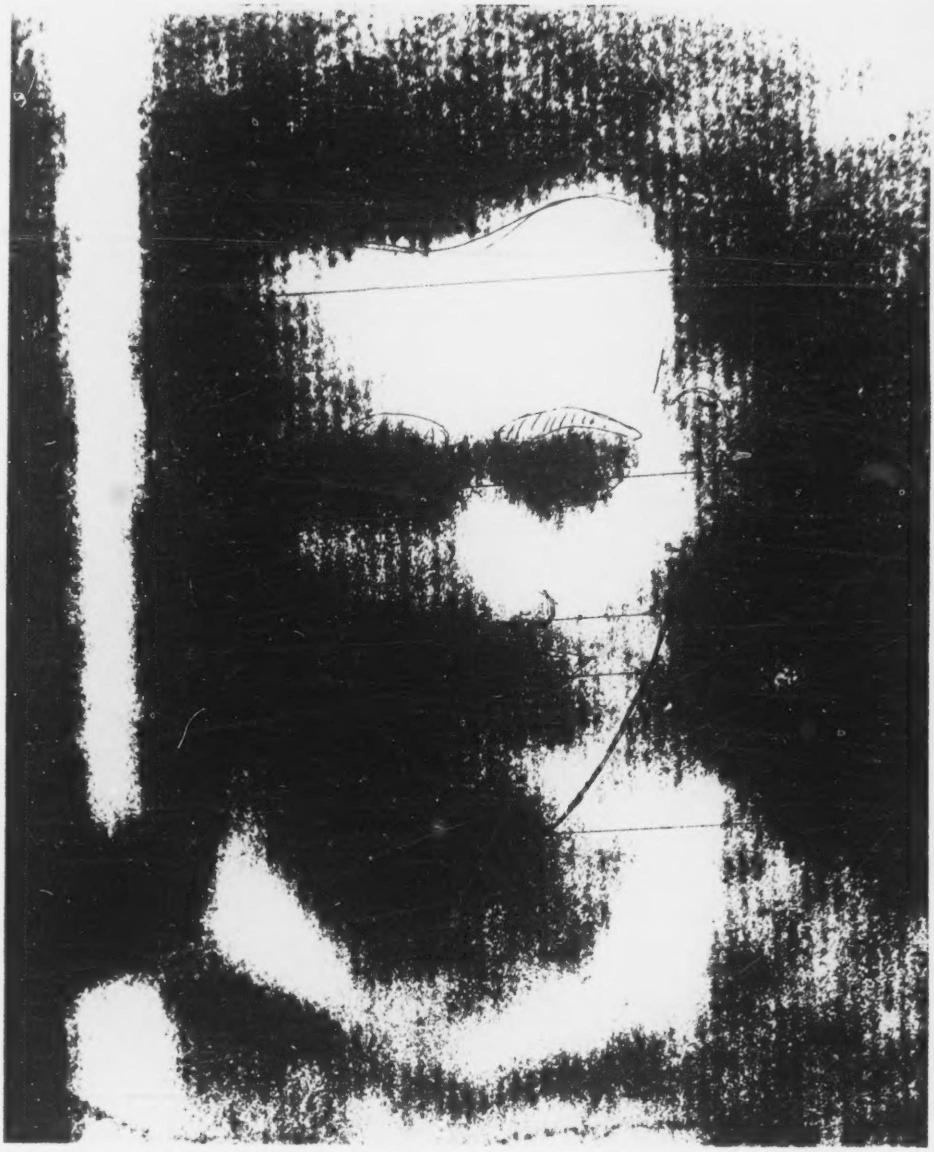
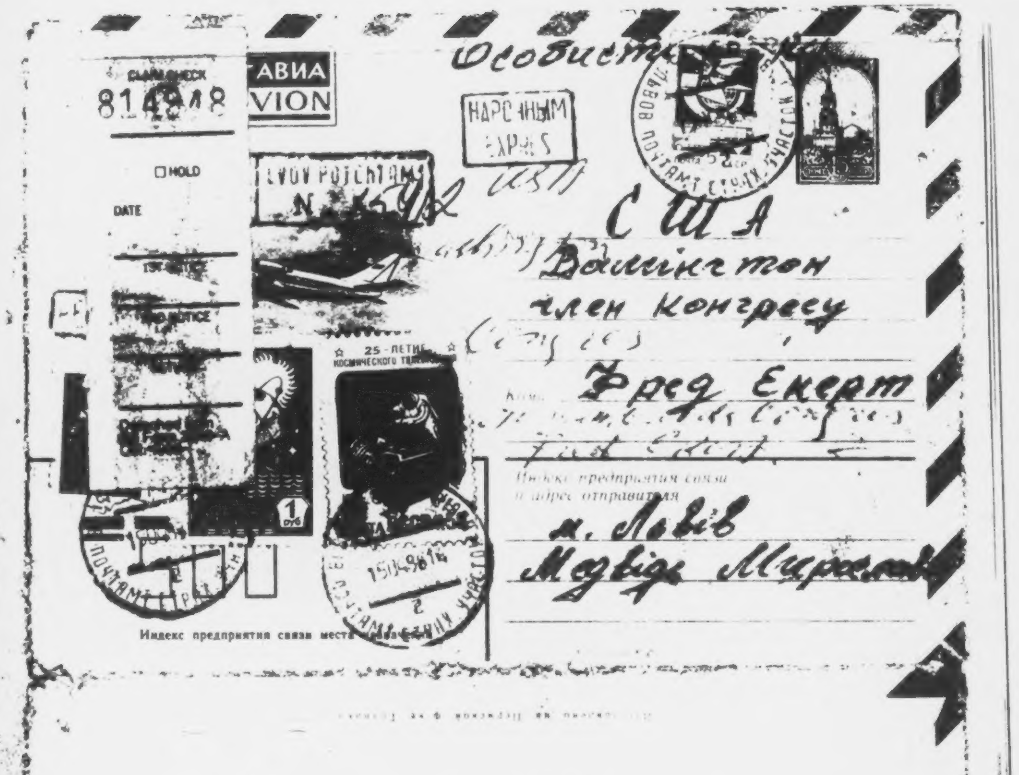
AL
⑨
⑤
CH
⑦
ME





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и адрес отправителя
м. Львів
Медвідь Мирос

Индекс предприятия связи места назначения

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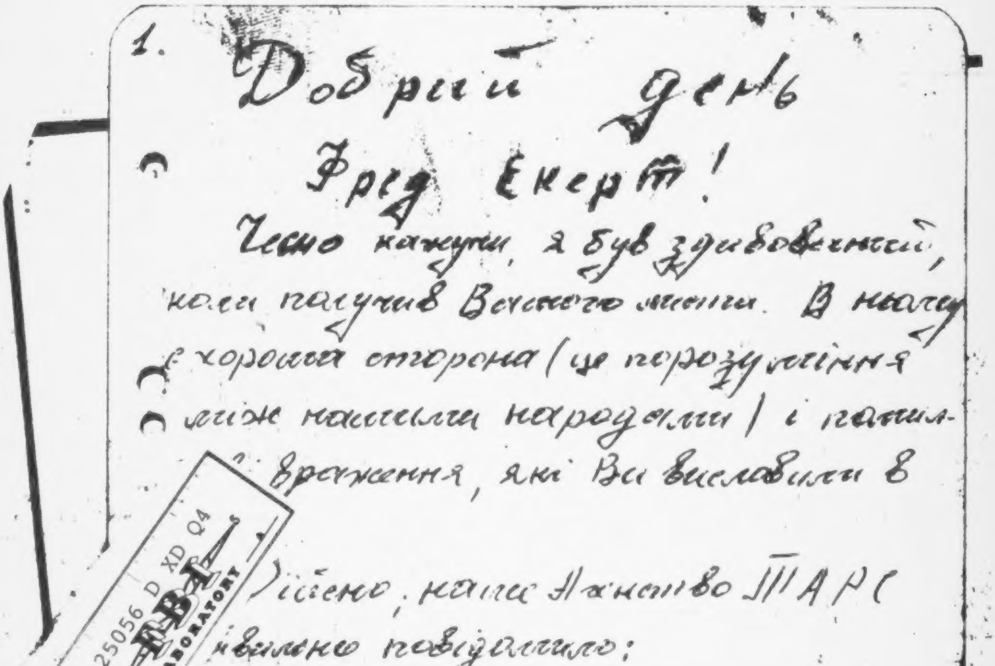

1.

Добрий день
Фред Екерт!

Чесно кажучи, я був здивований, коли получив Вашого листа. В ньому є хороша сторона (це порозуміння між нашими народами) і помил- [illegible] враження, які Ви висловили в

Дійсно, наше Агенство ТАРС [illegible] повідомило:

„Чутки про мою смерть значно перебільшені“.

Після повернення до Радянського Союзу мене ніяка смерть, тим більше ГУЛАГ не очікували. Наявно там у вас пере-тарались на рахунок моєї смерти.

Дійсно, мене вдома тепло привітали. З Вашого листа я зрозумів, що Ви Фред Екерт дивуєтеся, що ми

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2. могли тепло привітати вдома. Можливо, це здивування викликано звичаями вашого суспільства. У нас, на Батьківщині - це являється нормою.

З судна дійсно я не стрибав. Ви тут дивуєтесь, чому я впав з такої висоти ≈ 14 м попав до берега, а не до судна (1 м). Інтересно куди б Ви попали при вітрі ≈ 15 км/год? впа[illegible] з такої висоти!

Агентство [illegible] правильно повідомляє, що [illegible]лася вся права сторона [illegible] голова, ліва рука, тяну[illegible]у, праву ногу. [illegible] врачі зробили операцію на ліву руку: „Пошкодження [illegible] серединного нерва", і все роби[illegible] для того, щоб покращити мій стан здоровя. - До речі - безплатно.

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3. В мене думки не було оставатися в США. Наоборот, просив я Луїса Селла 26 годин:

„Смогу ли я живым увидеть папу и маму".

Якщо Ви Фред Екерт не вірите мені, як і частина американців, то спитайте у цих людей, які займались мною!

Наша країна бажає миру у всьому світі. Багато ділових пропозицій було висловлено нашим Генеральним Секретарем ЦК КПРС М. С. Горбачовим. Це, напевно, відомо і Вам Фред Екерт.

5 хлопців, радіо почули так

Зак, що більшість американців бажає кращих відносин з Радянським Союзом. Я також „За", як і весь наш Радянський Народ.

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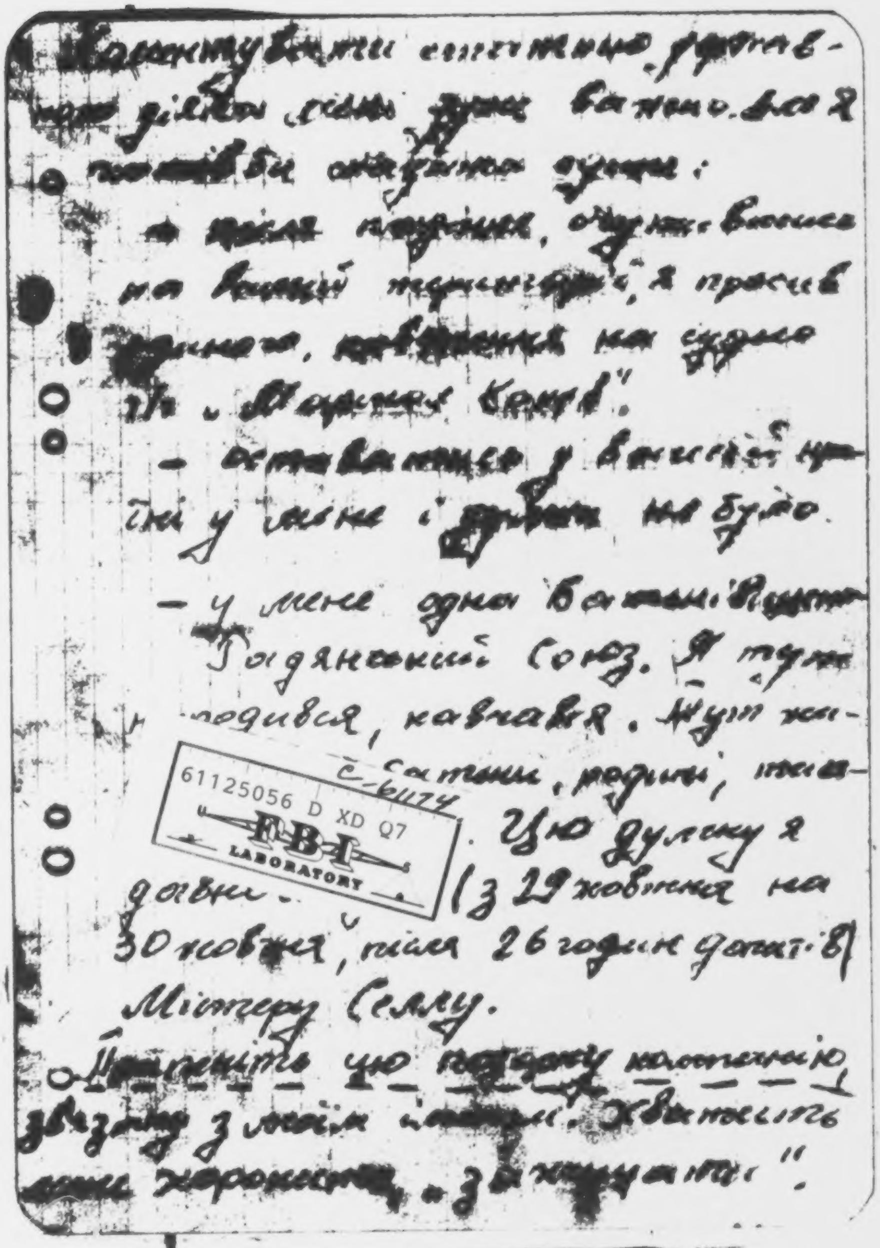

Користуватися елементарною [illegible]-
[illegible] дією [illegible] [illegible] важно. Але я
помітив би одну думку:
- після [illegible], [illegible]
на вашій територію, я просив
[illegible], повернутися на судно
ім. „Маршал Конєв".
- оставатися у вашій краї-
ні у мене і думки не було.

- у мене одна Батьківщина: [illegible]
Радянський Союз. Я тут
родився, навчався. Тут жи-
[illegible], родичі, това-
[illegible]. Цю думку я
довів (з 29 жовтня на
30 жовтня, після 26 годин дебат. 8)
Містеру Селлу.
Припиніть цю погану кампанію,
зв'язану з моїм [illegible]. [illegible]
мене хорошо[illegible] „з[illegible]".

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C-6474
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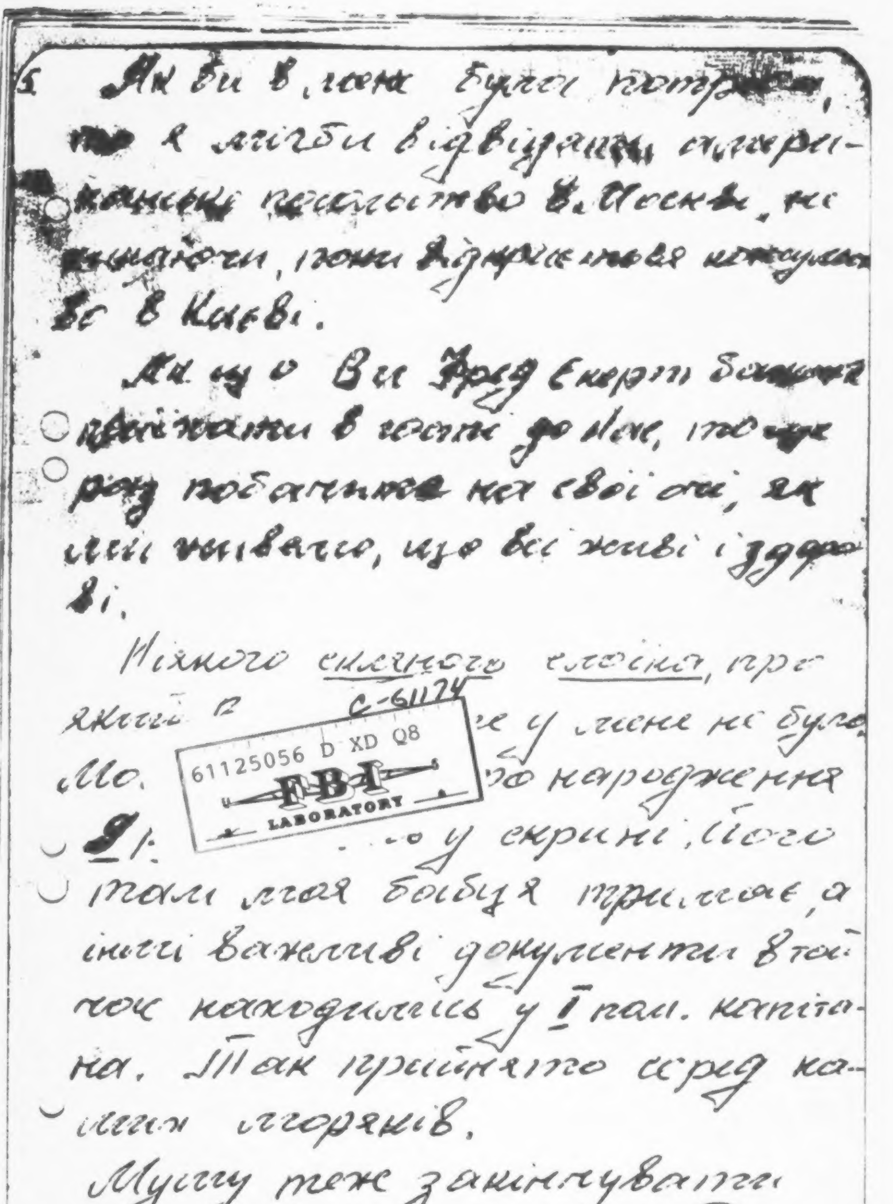
LABORATORY



5 Як би в мене була потреба, то я міг би відвідати американське посольство в Москві, не знаючи, коли відкриється консулат ЗС в Києві.

Як що б Ви перед смертю бажали приїхати в гості до мене, то цей раз побачили б на свої очі, як ми чуваємо, що всі живі і здорові.

Ніякого смішного случаю, про який в [illegible] е у мене не було. Мо [illegible] во народження 9 [illegible] о у скрині, його там моя бабуся тримає, а інші важливі документи в той час находились у I пом. капітана. Так прийнято серед ка[illegible] моряків.

Мушу теж закінчувати листа, бо іду на процедури

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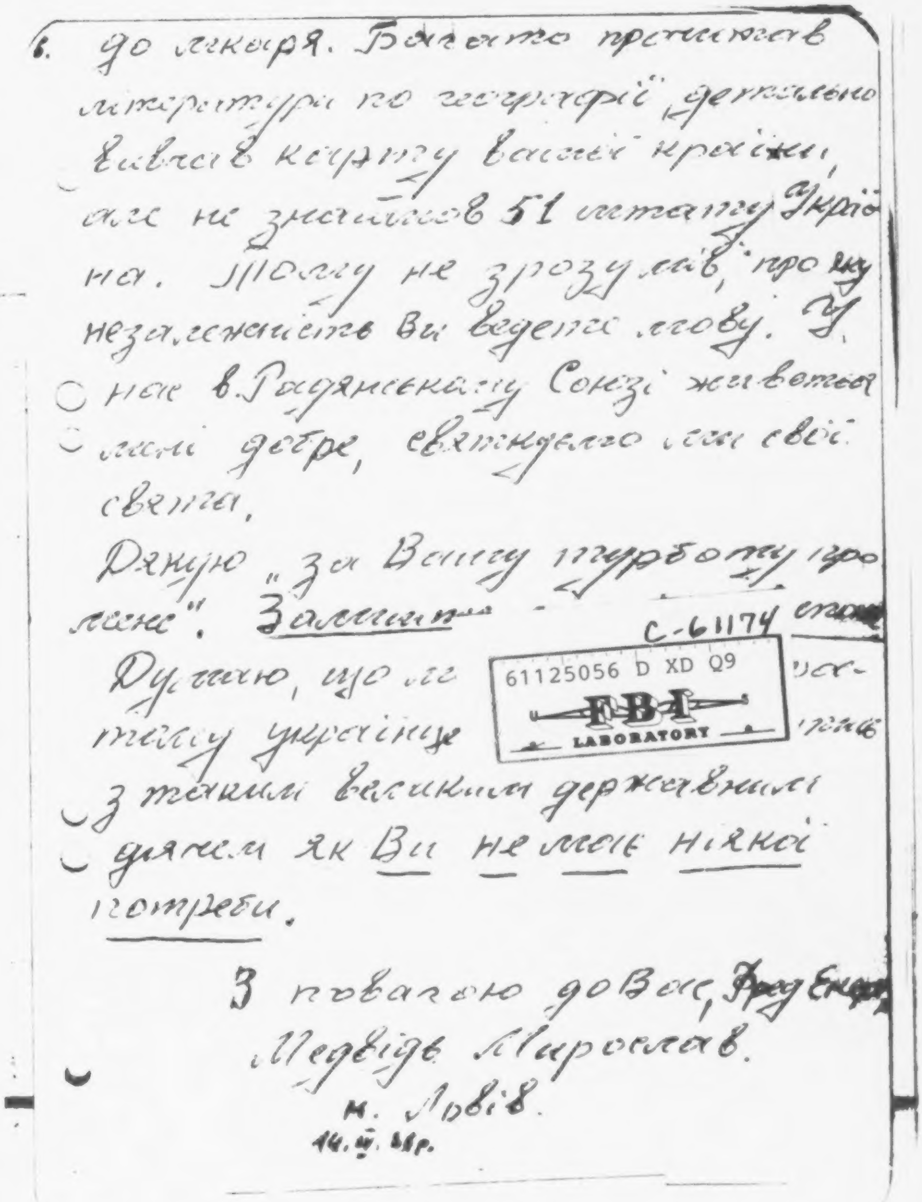

6. до лікаря. Багато прочитав
літератури по географії детально
вивчав карту вашої країни,
але не знайшов 51 штату Украї-
на. Тому не зрозумів, про яку
незалежність Ви ведете мову. У
нас в Радянському Союзі живеться
мені добре, святкуємо всі свої
свята.

Дякую „за Вашу турботу про
мене". Залишіть - [illegible]
C-61174
Думаю, що м[illegible] ис-
тому українцю [illegible]
з таким великим державним
діячем як Ви немає ніякої
потреби.

61125056 D XD Q9
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LABORATORY

З повагою до Вас, студент
Медвідь Мирослав.
м. Львів.
14.III.62р.

ALFONSE M. D'AMATO
CHAIRMAN

STENY H. HOYER
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SECURITY AND COOPERATION IN EUROPE
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SAMUEL G. WISE
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MARY SUE HAFNER
GENERAL COUNSEL

237 HOUSE OFFICE BUILDING, ANNEX 2

(202) 225-1901

December 8, 1986

The Honorable Yuri V. Dubinin
Ambassador
Embassy of the U.S.S.R.
1125 16th Street, N.W.
Washington, D.C. 20036

REF: PM/C 034

Dear Mr. Ambassador:

As you may know, the Commission on Security and Cooperation in Europe has been directed by the United States Senate to make further inquiry into the case of Miroslav Medvid, the Ukrainian seaman who was involved in an incident in New Orleans, LA, in October 1985.

After careful review, we have determined that many of the lingering issues could be resolved if Commission staff were allowed to meet with Mr. Medvid. Primarily, we wish to reassure many of our doubting countrymen that Mr. Medvid is alive and well, as reported by your government and press.

Therefore, we respectfully request your assistance in arranging for our staff to visit Mr. Medvid in the U.S.S.R., preferably during the week of January 26-30, 1987. We must complete our inquiry as quickly as possible and your prompt action will be greatly appreciated.

Specific arrangements (and any questions you may have) will be handled by Paul Lamberth, Project Director, at 225-1901. We will deal directly with whomever you designate to represent the U.S.S.R. in this matter. We anticipate and thank you in advance for your immediate attention to this request.

Sincerely Yours,

Steny H. Hoyer
STENY H. HOYER
Co-Chairman

Alfonse D'Amato
ALFONSE M. D'AMATO
Chairman

1-336 (Rev. 10-26-79)

FEDERAL BUREAU OF INVESTIGATION
Washington, D. C. 20537

REPORT
of the
LATENT FINGERPRINT SECTION
IDENTIFICATION DIVISION

YOUR FILE NO.
FBI FILE NO.
LATENT CASE NO. C-61174

January 7, 1987

TO: Chairman Alfonse M. D'Amato
Congress of the United States
Commission on Security and Cooperation in Europe
237 House Office Building, Annex 2
Washington, D. C. 20515

RE: UNKNOWN SUBJECT(S), aka
Miroslav Medvid;
LATENT FINGERPRINT EXAMINATION

REFERENCE: Letter November 21, 1986, and specimens received December 22, 1986
EXAMINATION REQUESTED BY: Addressee
SPECIMENS: Copy of letter, Q1
Copy of letter, Q2
Airmail envelope, Q3
Six-page letter, Q4 through Q9
Envelope, K1
Jar
Fingerprints of Miroslav Medvid (Medwid Myroslaw)

The specimens were examined and twenty-two latent fingerprints and one latent palm print of value were developed on Q1, Q2, Q6 through Q9 and the jar.

One latent fingerprint developed on Q1, a copy of a letter bearing typewriting and hand printing beginning "STATEMENT BY..."; one latent fingerprint developed on Q2, a copy of a letter bearing foreign typewriting and handwriting; and two latent fingerprints developed on Q6 and Q7, parts of a six-page lètter bearing foreign handwriting, have been identified as finger impressions of Miroslav Medvid (Medwid Myroslaw), born March 24, 1960, Immigration and Naturalization Service Border Patrol, New Orleans, Louisiana, #A16058032.

(Continued on next page)

Three latent fingerprints, which are from the tip and side areas of fingers, were compared, insofar as possible, with the fingerprints of Medvid, but no identification was effected. Inked impressions of the tips and sides of the fingers of this individual are needed for conclusive comparisons. There are no palm prints contained in our Identification Division files for this person. The remaining latent fingerprints are not identical with the fingerprints of Medvid.

No additional fingerprint record was located in our Identification Division files for Medvid.

Should you desire testimony by one of the FBI's fingerprint experts in this case, we should be notified in ample time to permit the preparation of the necessary exhibits. This report should be used, however, if legal considerations permit, in lieu of the appearance of our expert.

The specimens are being returned under separate cover.

The result of the laboratory examination will be furnished separately.

DEPARTMENT OF STATE
Washington, D.C. 20520

January 4, 1972*

General Policy for Dealing with Requests for Asylum by Foreign Nationals

POLICY

Both within the United States and abroad, foreign nationals who request asylum of the United States Government owing to persecution or fear of persecution should be given full opportunity to have their requests considered on their merits. The request of a person for asylum or temporary refuge shall not be arbitrarily or summarily refused by U.S. personnel. Because of the wide variety of circumstances which may be involved, each request must be dealt with on an individual basis, taking into account humanitarian principles, applicable laws and other factors.

In cases of such requests occurring within foreign jurisdiction, the ability of the United States Government to give assistance will vary with location and circumstances of the request.

U.S. OBJECTIVES

A basic objective of the United States is to promote institutional and individual freedom and humanitarian concern for the treatment of the individual.

Through the implementation of generous policies of asylum and assistance for political refugees, the United States provides leadership toward resolving refugee problems.

BACKGROUND

A primary consideration in U.S. asylum policy is the Protocol Relating to the Status of Refugees (19 United States Treaties and Other International Agreements 6223), to which the United States is a party. The principle of asylum inherent in this international treaty (and in the 1951 Refugee Convention whose substantive provisions are by reference incorporated in the Protocol) and its explicit prohibition against the forcible return of refugees to conditions of persecution, have solidified these concepts further in international law. As a party to the Protocol, the United States has an international treaty obligation for its implementation within areas subject to jurisdiction of the United States.

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*Updated January 10, 1973 to conform with the Foreign Affairs Manual

United States participation in assistance programs for the relief of refugees outside United States jurisdiction and for their permanent resettlement in asylum or other countries helps resolve existing refugee problems. It also avoids extensive accumulation of refugees in asylum countries and promotes the willingness of the latter to maintain policies of asylum for other arriving refugees.

The President has reemphasized the United States commitment to the provision of asylum for refugees and directed appropriate Departments and Agencies of the U.S. Government, under the coordination of the Department of State, to take steps to bring to every echelon of the U.S. Government which could possibly be involved with persons seeking asylum a sense of the depth and urgency of our commitment.

PART TWO

Handling Asylum Requests by Persons in the United States or in Other Areas Outside Any Foreign Jurisdiction

All U.S. Government personnel who may receive a request from a foreign national for asylum within territory under the jurisdiction of the United States, or aboard a U.S. vessel or aircraft in or over U.S. territorial waters or on or over the high seas, should become thoroughly familiar with procedures for the handling of such requests. Implementing instructions issued by Government agencies to establish these procedures should receive the widest dissemination among such personnel.

PROCEDURES

A. Upon receipt of a request for asylum from a foreign national or an indication that a request from a foreign national is imminent, U.S. Government agencies should immediately notify the Department Operations Officer at the Operations Center of the Department of State (telephone area code 202, 632-1512). The Department Operations Officer will refer any request to the appropriate offices in the Department of State and will maintain contact with the U.S. agency involved until the designated action officer in the Department of State assumes charge of the case.

The following information should be forwarded to the Department Operations Officer at the Operations Center when available but the initial report must not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in the individual's possession.
4. What foreign authorities are aware that the individual is seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, estimated time of arrival at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

Telephone notification to the Operations Center should be confirmed as soon as possible with an IMMEDIATE precedence telegram to the Department of State summarizing all available information.

B. Safe protective custody will be provided to the asylum seeker and, where indicated, appropriate law enforcement or security authorities will be brought in as early as possible. Interim measures taken to assure safe custody may include the use of force against attempts at forcible repatriation where means of resistance are available, taking into account the safety of U.S. personnel and using no greater force than necessary to protect the individual. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to headquarters for instructions.

C. U.S. Government agencies should also immediately inform the nearest office of the U.S. Immigration and Naturalization Service (INS) of any request for asylum, furnish all details known, and arrange to transfer the case to INS as soon as feasible. Agencies should continue to follow any procedures already in effect between themselves and INS. (For INS only: Where INS has received a direct request for asylum and has assumed jurisdiction over a routine case in which forcible repatriation or deportation is not indicated, INS may follow existing notification procedures in lieu of the special alerting procedure to the Department of State described above.)

PART THREE

Handling Asylum Requests by Persons Within Foreign Jurisdiction

I. GENERAL PROCEDURES

These regulations set forth procedures for all U.S. Government agencies abroad in dealing with asylum requests at U.S. installations, vessels or aircraft in foreign jurisdictions.

A. Granting Asylum

While it is the policy of the U.S. not to grant asylum at its units or installations within the territorial jurisdiction of a foreign state, any requests for U.S. asylum should be reported in accordance with the procedures set forth herein.

B. Granting Temporary Refuge

Immediate temporary refuge for humanitarian reasons, however, may be granted (except to board aircraft because of their vulnerability to hijacking) in extreme or exceptional circumstances wherein the life or safety of a person is put in danger, such as pursuit by a mob.

When such temporary refuge is granted, the U.S. Embassy or consular post having jurisdiction, the Washington headquarters of the concerned agency, and the Department of State should be immediately notified. Military units under direct Embassy jurisdiction will report through the Embassy, unless the senior diplomatic official determines otherwise.

To the extent circumstances permit, persons given temporary refuge should be afforded every reasonable care and protection. The measures which can prudently be utilized in providing this protection must be a matter for decision of the senior U.S. official present at the scene, taking into consideration the safety of U.S. personnel and the established security procedures for the unit or installation concerned.

Protection shall be terminated when the period of active danger is ended, except that authority to do so shall be obtained from the Department of State. Where a military installation not under direct Embassy jurisdiction is involved, such authority shall be obtained from its Washington headquarters upon concurrence of the Department of State. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to Washington.

C. Notification to Department of State of Asylum Requests

Upon receipt of a request for U.S. asylum made by any foreign national, U.S. personnel within foreign jurisdiction should notify immediately the nearest U.S. diplomatic or consular post in the country in which the request is made. Embassies or consulates will forward this information to the Department of State by an IMMEDIATE precedence telegram. Agencies having their own rapid communications systems with direct contact with their headquarters in the U.S. may notify those headquarters, with information copies to the nearest Embassy or consular post and the Department of State, by IMMEDIATE precedence message.

D. Information to be Transmitted

With respect to requests for temporary refuge (whether or not granted) or for asylum, the following information should be furnished when available, but the initial report should not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in the individual's possession.
4. What foreign authorities are aware that the individual is seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, estimated time of arrival at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

II. DIPLOMATIC AND CONSULAR ESTABLISHMENTS

A. Requests for Asylum (Restrictions on Extending Asylum)

As a rule, a diplomatic or consular officer shall not extend asylum to persons outside of the officer's official or personal household. Refuge may be afforded to uninvited persons who are in danger of serious harm, as from mob violence, but only for the period during which active danger continues.

With the concurrence of the Department, refuge shall be terminated on receipt of satisfactory assurances from the established national government that the refugee's personal safety is guaranteed against lawless or arbitrary actions and that the refugee will be accorded due process of law.

B. Routine Requests

Requests of third country nationals for asylum made to diplomatic and consular posts need not be reported immediately to the Department of State when all of the following conditions exist:

(a) Adequate host government machinery is well established which, in the opinion of the Embassy, assures satisfactory protection of the asylum seeker's rights.
(b) There is no evidence of danger of forcible repatriation.
(c) Local authorities can be expected to assume responsibility for the asylum seeker.

C. Coordination with Host Country Authorities

Action with regard to third country nationals seeking asylum should normally be taken within the over-allppolicy that the granting of asylum is the right and responsibility ✓ of the government of the country in whose territory the request is made. Unless the Embassy deems that there are cogent reasons for not doing so, these authorities should be informed by the Embassy as soon as practicable of the request for asylum.

Activities should also be coordinated by the Embassy with the representative of the United Nations High Commissioner for Refugees (UNHCR), where such a representative is resident and the Embassy deems it appropriate. The UNHCR is a valuable instrument for providing international protection and securing adequate legal and political status for refugees. In addition to providing guarantees against forcible repatriation, the UNHCR seeks to secure for refugees legal, political, economic and social rights within asylum countries.

D. Available U.S. Assistance

The United States is prepared in the cases of selected refugees to provide care and maintenance, and to assist in local settlement in the country of first asylum or in another country of resettlement, including the United States. Such assistance is normally provided through voluntary agencies under a contract with the Department of State. In cases where the Embassy or consular post has determined that U.S. assistance is warranted, it should telegraph the Department of State recommending the type and extent of initial aid and ultimate resettlement considered most suitable.

Notices

DEPARTMENT OF STATE

[Public Notice 351]

REQUESTS FOR ASYLUM

Policy and Procedures

The following procedures were transmitted by memorandum of January 7, 1972, to all U.S. Government departments and agencies. Copies were also sent to all American diplomatic and consular posts instructing them to coordinate implementation by U.S. Government units within the areas of their jurisdiction.

Dated: February 1, 1972.

[SEAL] WILLIAM P. ROGERS,
Secretary of State.

JANUARY 4, 1972.

PART I—GENERAL POLICY FOR DEALING WITH REQUESTS FOR ASYLUM BY FOREIGN NATIONALS

Policy. Both within the United States and abroad, foreign nationals who request asylum of the U.S. Government owing to persecution or fear of persecution should be given full opportunity to have their requests considered on their merits. The request of a person for asylum or temporary refuge shall not be arbitrarily or summarily refused by U.S. personnel. Because of the wide variety of circumstances which may be involved, each request must be dealt with on an individual basis, taking into account humanitarian principles, applicable laws and other factors.

In cases of such requests occurring within foreign jurisdiction, the ability of the U.S. Government to give assistance will vary with location and circumstances of the request.

U.S. objectives. A basic objective of the United States is to promote institutional and individual freedom and humanitarian concern for the treatment of the individual.

Through the implementation of generous policies of asylum and assistance for political refugees, the United States provides leadership toward resolving refugee problems.

Background. A primary consideration in U.S. asylum policy is the "Protocol Relating to the Status of Refugees," to which the United States is a party. The principle of asylum inherent in this international treaty (and in the 1951 Refugee Convention whose substantive provisions are by reference incorporated in the Protocol) and its explicit prohibition against the forcible return of refugees to conditions of persecution, have solidified these concepts further in international law. As a party to the Protocol, the United States has an international treaty obligation for its implementation within areas subject to jurisdiction of the United States.

U.S. participation in assistance programs for the relief of refugees outside U.S. jurisdiction and for their permanent resettlement in asylum or other countries helps resolve existing refugee problems. It also avoids extensive accumulation of refugees in asylum countries and promotes the willingness of the latter to maintain policies of asylum for other arriving refugees.

President Nixon has reemphasized the U.S. commitment to the provision of asylum for refugees and directed appropriate departments and agencies of the U.S. Government, under the coordination of the Department of State, to take steps to bring to every echelon of the U.S. Government which could possibly be involved with persons seeking asylum a sense of the depth and urgency of our commitment.

PART II—HANDLING ASYLUM REQUESTS BY PERSONS IN THE UNITED STATES OR IN OTHER AREAS OUTSIDE ANY FOREIGN JURISDICTION

All U.S. Government personnel who may receive a request from a foreign national for asylum within territory under the jurisdiction of the United States, or aboard a U.S. vessel or aircraft in or over U.S. territorial waters or on or over the high seas, should become thoroughly familiar with procedures for the handling of such requests. Implementing instructions issued by Government agencies to establish these procedures should receive the widest dissemination among such personnel.

Procedures. A. Upon receipt of a request for asylum from a foreign national or an indication that a request from a foreign national is imminent, U.S. Government agencies should immediately notify the Department Operations Officer at the Operations Center of the Department of State (Telephone area code 202, 632-1512). The Department Operations Officer will refer any request to the appropriate offices in the Department of State and will maintain contact with the U.S. agency involved until the designated action officer in the Department of State assumes charge of the case.

The following information should be forwarded to the Department Operations Officer at the Operations Center when available but the initial report must not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in his possession.
4. What foreign authorities are aware of his seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, ETA at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

Telephone notification to the Operations Center should be confirmed as soon as possible with an immediate precedence telegram to the Department of State summarizing all available information.

B. Safe protective custody will be provided to the asylum seeker and, where indicated, appropriate law enforcement or security authorities will be brought in as early as possible. Interim measures taken to assure safe custody may include the use of force against attempts at forcible repatriation where means or resistance are available, taking into account the safety of U.S. personnel and using no greater force than necessary to protect the individual. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to headquarters for instructions.

C. U.S. Government agencies should also immediately inform the nearest office of the U.S. Immigration and Naturalization Service (INS) of any request for asylum, furnish all details known, and arrange to transfer the case to INS as soon as feasible. Agencies should continue to follow any procedures already in effect between themselves and INS. For INS only: Where INS has received a direct request for asylum and has assumed jurisdiction over a routine case in which forcible repatriation or deportation is not indicated, INS may follow existing notification procedures in lieu of the special alerting procedure to the Department of State described above.

PART III—HANDLING ASYLUM REQUESTS BY PERSONS WITHIN FOREIGN JURISDICTIONS

This instruction sets forth procedures for all U.S. Government agencies abroad in dealing with asylum requests at U.S. installations, vessels, or aircraft in foreign jurisdictions.

I. GRANTING ASYLUM

While it is the policy of the United States not to grant asylum at its units or installations within the territorial jurisdiction of a foreign state, any requests for U.S. asylum should be reported in accordance with the procedures set forth herein.

II. GRANTING TEMPORARY REFUGE

Immediate temporary refuge for humanitarian reasons, however, may be granted (except to board aircraft because of their vulnerability to hijacking) in extreme or exceptional circumstances wherein the life or safety of a person is put in danger, such as pursuit by a mob.

When such temporary refuge is granted, the American Embassy or consular office having jurisdiction, the Washington headquarters of the concerned agency, and the Department of State should be immediately notified. Military units under direct Embassy jurisdiction will report through the Embassy, unless the senior diplomatic official determines otherwise.

To the extent circumstances permit, persons given temporary refuge should be afforded every reasonable care and protection. The measures which can prudently be utilized in providing this protection must be a matter for decision of the senior U.S. official present at the scene, taking into consideration the safety of American personnel and the established security procedures for the unit or installation concerned.

Protection shall be terminated when the period of active danger is ended, except that authority to do so shall be obtained from the Department of State. Where a military installation not under direct Embassy jurisdiction is involved, such authority shall be obtained from its Washington headquarters upon concurrence of the Department of State. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to Washington.

III. NOTIFICATION TO DEPARTMENT OF STATE OF ASYLUM REQUESTS

Upon receipt of a request for U.S. asylum made by any foreign national, U.S. personnel within foreign jurisdiction should notify immediately the nearest American diplomatic or consular office in the country in which the request is made. Embassies or Consulates will forward this information to the Department of State by an immediate precedence telegram. Agencies having their own rapid communications systems with direct contact with their headquarters in the United States may notify those headquarters, with information copies to the nearest Embassy or Consular office and the Department of State, by immediate precedence message.

IV. INFORMATION TO BE TRANSMITTED

With respect to requests for temporary refuge (whether or not granted) or for asylum, the following information should be furnished when available but the initial report should not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in his possession.
4. What foreign authorities are aware of his seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, ETA at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

V. DIPLOMATIC AND CONSULAR ESTABLISHMENTS

A. *Requests for asylum*. Requests for asylum made at U.S. diplomatic and consular establishments will continue to be dealt with in accordance with the provisions of Volume 2, section 225.2 of the Foreign Affairs Manual, except that, should temporary refuge be granted, the authority of the Department of State must be obtained before such refuge is terminated.

B. *Routine requests*. Requests of third country nationals for asylum made to diplomatic and consular offices need not be reported immediately to the Department of State when all of the following conditions exist:

(a) Adequate host government machinery is well established which, in the opinion of the Embassy, assures satisfactory protection of the asylum seeker's rights.

(b) There is no evidence of danger of forcible repatriation.

(c) Local authorities can be expected to assume responsibility for the asylum seeker.

C. *Coordination with host country authorities*. Action with regard to third country nationals seeking asylum should normally be taken within the overall policy that the granting of asylum is the right and responsibility of the government of the country in whose territory the request is made. Unless the Embassy deems that there are cogent reasons for not doing so, these authorities should be informed by the Embassy as soon as practicable of the request for asylum.

Activities should also be coordinated by the Embassy with the representative of the United Nations High Commissioner for Refugees (UNHCR), where such a representative is resident and the Embassy deems it appropriate. The UNHCR is a valuable instrument for providing international protection and securing adequate legal and political status for refugees. In addition to providing guarantees against forcible repatriation, the UNHCR seeks to assure for refugees legal, political, economic and social rights within asylum countries.

D. *Available U.S. assistance*. The United States is prepared in the cases of selected refugees to provide care and maintenance, and to assist in local settlement in the country of first asylum or in another country of resettlement, including the United States. Such assistance is normally provided through voluntary agencies under a contract with the Department of State. In cases where the Embassy or Consular Office has determined that U.S. assistance is warranted, it should telegraph the Department of State recommending the type and extent of initial aid and ultimate resettlement considered most suitable.

[FR Doc.72-2327 Filed 2-15-72;8:52 am]

DEPARTMENT OF STATE

[Public Notice 728]

Requests for Asylum

The following guidelines are intended to supplement and modify Public Notice 351 (37 FR 3447, February 16, 1972), with respect to notification to the Department of State of actual or imminent requests for asylum. Whereas Public Notice 351 required immediate notification of all such requests, the following guidelines establish criteria for distinguishing requests which call for immediate notification and those requests which need only be brought to the attention of the Immigration and Naturalization Service.

Guidelines for Notification to the U.S. Department of State of Requests for Asylum

The Department of State wishes to be notified immediately of any request (or imminent request) for asylum which is politically sensitive or involves the possibility of forcible repatriation. In particular, the Department of State should be informed immediately of a request for asylum from:

(1) Any national of the Soviet Union;

(2) Any national of East Germany, Romania, Poland, Hungary, Czechoslovakia, Bulgaria, Mongolia, Cuba, Albania, the People's Republic of China, North Korea, Vietnam, Laos, or Kampuchea, who is present in the United States as part of an official visit, formal cultural or athletic exchange, exchange student program or state-owned business or enterprise activity, or who is in transit through the United States in such capacity;

(3) Any foreign diplomat, foreign consular officer, or foreign official, regardless of the country;

(4) Any other alien who asserts there is a serious threat of forcible repatriation to himself or to his family.

In addition, the Department of State should be informed immediately of any request for asylum which for other reasons presents special problems calling for the Department's prompt attention. Other requests, not calling for such attention by the Department of State, should be brought to the attention of the local district director of the Immigration and Naturalization Service.

United States agencies or other authorities receiving a request for asylum meriting the Department of State's prompt attention (or knowing that such a request is immnent) should immediately notify the Department of State's Operations Officer at the Department of State's Operations Center in Washington, D.C. (Telephone: 202-632-1512.)

Dated: October 1, 1980.

For the Secretary of State.

Ben H. Read,

Under Secretary for Management.

[FR Doc. 80-33103 Filed 10-23-80; 8:45 am]

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APPENDICES

Page
A. Chronology of the Medvid Incident 365
B. Psychiatriac Report 390
C. Other Reference Materials 415

APPENDIX A: MEDVID INCIDENT CHRONOLOGY

The following chronology was compiled from seven separate logs of events obtained from witnesses and information sources. Entries herein are summarized from original source logs, to ensure pertinence and clarity. The seven source logs are: "BP" – Border Patrol radio log from New Orleans office; "DO" – District Office log from New Orleans Office of Immigration and Naturalization Service; "BPS" – Border Patrol Sector office log from New Orleans office (distinct from radio dispatcher's log); "DOS" – Department of State log from Washington, DC, Office of Soviet Union Affairs; "USCG" – US Coast Guard log from Washington, DC, headquarters, Port Security Branch; "Customs" – US Customs Service log from New Orleans Regional Office; and "CO" – Central Office of Immigration and Naturalization Service log from Washington, DC, headquarters. All times were converted to Central Standard Time on the 24-hour clock, for uniformity.

Time	Station (Log)	Text
		October 24, 1985
1431	BP	Bashaw and Spurlock begin their tour of duty.
2054	BP	Bashaw is advised that Weldon won't be in the office the next morning and Bashaw is to do the morning report.
2156	BP	Note: Harbor PD has a crewman; he is being taken to HQ; advised that Bashaw & Spurlock will be there in about 20 minutes.
2219	BP	Bashaw and Spurlock arrive at the Harbor PD HQ.
2248	BP	Spurlock is out of service at the station with one person in custody.
2302	BP	Bashaw is out of service at the station.
2329	BP	Note: Records check on Myroslaw, Medvid, 3/24/60, Russia.
2342	BP	Bashaw advises the radio operator that the name of ship is Koniew and requests a check to see where the vessel is located. The operator finds no record of the vessel and checks with the Coast Guard which also has no record of the vessel.
2347	BP	Note: Records check is negative (RE: MEDVID)
2358	BP	Bashaw advises the radio operator that the first name of the ship is "Marshal."
		October 25, 1985
0020	BP	Note: A call from Mike [Flad] from Universal Shipping is referred to Bashaw.

Time	Station (Log)	Text
0034	BP	Note: Bashaw and Spurlock are at the station awaiting the shipping agent who is to pick up the crewman.
0200	DO	Rasmussen overhears a launch operator at Arabi discussing an incident involving a deserting crewman from an unspecified Russian ship. Mention is made of a scuffle occurring in the presence of officials and the shipping agent. There is some indication that the ship may be departing.
0800	DO	Rasmussen contacts AP and talks to Lund and Bond to see if the ship is in port or is leaving. Vannett overhears the conversation and states that the Patrol apprehended a Soviet crewman [the night before] and returned him to his ship.
1210	DO	[Jerome] Kurpel, an engineer with Mobil Oil, appears at Rasmussen's office and asks about the Ukrainian crewman who had wanted asylum, had been put in jail and was "then put back on ship?" Kurpel knew only that a Dr. Sas-Jaworski from Abbeville, LA, had been called by someone in NYC about the crewman.
1215	DO	Rasmussen advises Parra that a problem may exist.
1220	DO	Rasmussen gets Dr. Sas-Jaworski's phone number from Kurpel.
1225	DO	Rasmussen talks to Dr. Sas-Jaworski who indicates that he received a telephone call from Mrs. Irene Padoch in NYC who told him that a Ukrainian crewman jumped ship in New Orleans, had been arrested "and put forcefully back on [the] boat." Mrs. Padoch claimed that the crewman was looking for asylum. Dr. Sas-Jaworski had also called Congresswoman Lindy Boggs.
1235	DO	Parra calls Tabor who pulls the Patrol record A16 058 032. Tabor advises that there was no request for asylum but that the seaman indicated he did not want to go back to the ship, for an unspecified reason. The seaman was turned over to the shipping agent.
1245	BPS	Parra and Rasmussen call Tabor to inquire if Patrol returned a Russian crewman to a ship on the night of October 24. They had received a call from a locally based Ukrainian group that reported Padoch told them a Russian citizen, name unknown, circumstances unknown, had been put back aboard his ship against his will.
1245	DO	Rasmussen locates the A-file which indicates that the seaman "jumped ship in the United States for political and moral reasons." He informs Parra that they have a definite problem.
1250	DO	Parra calls Tabor and advises him of the situation. Parra attempts to contact officials at Central office, but all are at a luncheon.
1310	DO	Rasmussen talks to the shipping agent Mike Flad of Universal Shipping, who says that Medvid jumped ship and was picked up by the local police. Border Patrol contacted the shipping agent about 12 PM, and the crewman was taken back to the ship. When the launch approached the vessel, the 2nd mate came down and talked to Medvid, who then dove overboard and swam for shore. The mate directed the launch to shore, jumped after Medvid, and sent the launch back for help. Three persons, including the "commisar," responded. They fought and subdued the seaman, bound him and returned him to vessel. Flad tells Rasmussen that the Captain has been in touch with the owners in NYC and has been instructed to "lock up." Rasmussen tells the agent not to allow the ship to move without notifying INS.

Time	Station (Log)	Text
1356	DO	Tabor calls the District office and advises that he is sending four men to attempt to get the crewman off of the vessel. Tabor is told of the scuffle that occurred when the shipping agent attempted to put the crewman on board.
1410	DO	Kisor, INS, Commissioner/Enforcement, Central Office, is contacted and apprised. He suggests that the District contact the Patrol and have them make certain that the ship remains. He also suggests alerting the CG.
1418	DO	The District informs Goodwin of Kisor's recommendation.
1440	DOS	Deputy Assistant Commissioner Leupp of INS/Border Patrol notifies EUR/SOV of Medvid incident.
1445	DO	The District sends a copy of the I-213 to the Patrol.
1450	DOS	Sell briefed and advises Parris, who advises Palmer, who briefs Whitehead (Acting Secretary in Shultz's absence).
1500	DOS	Op center requests Commander Calhoun, Coast Guard, to detain Marshal Konev until DOS gives authorization to leave. Calhoun requests official department request and is advised a cable will be forthcoming, but is told that immediate action should be taken.
1500	DO	The INS Dallas Region apprises the District that DOS, CG, and the INS Commissioner Nelson, are aware of the situation and that Nelson has been in touch with DOJ. The district is warned to avoid comment to the media.
1505	USCG	Port Security Branch, Coast Guard HQ receives a telephone call from the DOS, indicating that a crewmember from the M/V Marshal Konev swam ashore and was forcefully returned to the vessel. DOS intends to determine if the crewman wanted asylum. DOS requests that CG prevent the vessel from departing the Port of New Orleans until the situation can be resolved. Formal request to follow.
1530	DO	The shipping agent calls the District wanting to know what is going on. He is told that the Patrol is at the vessel and wants to talk to the seaman. He indicates that he was aware of this and is going to the ship at the captain's request.
1530	DOS	Bonnett of INS/BP headquarters advises that 4 INS agents are now on board the ship, and have seen Medvid, who is sedated. Lysyshyn tells Bonnette to instruct the agents to tell the captain that the ship cannot leave until department reps have met with Medvid at a neutral location. INS reps are told to remain on board the ship and to remain with Medvid.
1535	DO	Goodwin advises the District that Patrol is on the vessel. The captain let them see the crewman, who has been drugged due to a "suicide attempt." The agents were not able to remove Medvid or take him for medical attention. The captain wanted to talk to his embassy.
1535	DO	The District contacts the Region and apprises them of the situation.
1545	DO	Goodwin requests standby in case assistance is needed.
1550	DO	The Region reports that Brandemuehl and Tabor have been apprised and advises the District to be prepared for guarded hospitalization of Medvid, if necessary, and to cooperate with the Patrol. There is to be no media comment. The public affairs officers are available.

Time	Station (Log)	Text
1600	Customs	Allison receives a telephone call from Worley, USBP, requesting Customs to keep the vessel from leaving. Worley also requests assistance from Customs if needed. Allison informs Grimes of the situation and with his concurrence asks the Marine division to not grant clearance to the vessel without notifying Allison or Grimes. Allison advises the sector to provide personnel from the duty roster if Border Patrol requests help.
1600	DOS	Palmer advises that Customs has issued a restraint order preventing the ship from leaving and that the CG will ensure the ship does not leave.
1605	DO	The District is advised that a DOS negotiator is enroute and will arrive at 1930; and DOS is in touch with the Soviet Embassy.
1610	DO	Cupp, Customs attorney, calls and advises that Customs is prepared to cooperate.
1640	DO	Parra calls Lambert (INS District Director).
1700	DOS	Palmer meets with Isakov, and insists on an interview with Medvid. Palmer recommends Soviet consular reps be sent to New Orleans.
1730	BPS	Kisor advises Parra that Shepler will accompany DOS Sell. If alien is relinquished, Caplinger and Arizola will take into protective custody.
1730	DOS	Kuleshov advises that Soviet Embassy officers Bondin and Kosov will go to NOLA.
1755	BP	Blackwell advises that the Konev captain is going back on board.
1800	BPS	Captain returns to the ship. Advised DCPA his embassy requests we have no further contact with alien until their rep arrives around midnight. Relayed to Brandemuehl, CO.
1800	Customs	Customs Command Post is activated at sector.
1800	DOS	Walters of BP calls to confirm BP Deputy Director NOLA has seen Medvid's Soviet passport.
1815	Customs	Allison receives a call from Tabor who requests backup.
1820	BPS	Parra advises Tabor that investigations unit will relieve BP agents at midnight. Caplinger + 3. Advised Ron to research "Prevention of Departure Notice."
1830	Customs	Grimes orders two uniformed Customs personnel (one supervisor) on board the vessel and two man units to backup positions on the motor launch dock.
1830	DOS	Mahan of Customs advises that he has just talked to Commissioner von Raab and they will refer all inquiries to the Soviet desk. Contact points at Customs -- Mahan and Green, Assistant Commissioner for Customs.
1830	BPS	ACPA calls to PAIC/GPS and BAT to request two men here at 6 AM.
1835	BPS	Tabor calls Berg (ROBOR) and gives an update.
1850	DOS	Kuleshov advises that the Soviets will arrive in NOLA at 11:04 tonight.
1913	BPS	Tabor advises Brandemuehl of update. He will call Parra to advise of legal counsel involvement.

Time	Station (Log)	Text
1921	BPS	Tabor calls Allison to learn that Customs will direct three units to Belle Chasse area as a precaution. Allison offered to post agent as a gangway guard to prevent any pilots from boarding. They have set up common posts for the duration. Can muster as many as 12 officers who are standby. Tabor gives Allison an update.
1930	Customs	Group Supv. Budzeyko and CPO Rector arrive at the command post for a briefing. They are instructed to board the vessel and announce their presence to the master.
1934	BPS	Tabor radios Worley to advise Customs will be in the area.
1940	BPS	Tabor calls Parra to advise him of Customs command post.
1941	BPS	Tabor advises Murphy, DOS, that two Russian diplomats, Bondin and Kosov, will arrive at 11:04 PM.
1945	DOS	Tabor advised that this morning Medvid tried to slit his wrists with glass from a lightbulb he broke. He is now in a separate room with the ship's doctor and nurse (not with the INS-inspectors). After telephoning the Soviet Embassy, the captain advised no one could talk to Medvid until Bondin arrived.
1953	BPS	Tabor advises Brandemuehl all is okay. Tabor will be out until about midnight. Don't call unless something significant happens.
2000	BPS	Weldon is enroute from airport with Sell.
2015	Customs	HQ Communications advises that a Night Action Immediate message has been received from DOS. The message will be passed through CG Classified communications.
2045	BPS	Sell arrives at Sector Headquarters and receives briefing.
2050	BPS	Tabor calls Parra and asks if he can find a doctor to accompany Sell. Suggested Sell contact them before he departs. Sell suggests someone meet the Russian diplomats and offer a ride to the ship.
2100	Customs	The message is received from DOS.
2100	DOS	Sell calls from INS/BP office. Tabor advises situation on boat is not hostile (i.e. no effort to force INS reps to leave), but INS reps are being kept from Medvid. CG and Customs on alert. HP will not board.
2105	BPS	Worley reports that all is calm on the ship. Captain and most of crew asleep.
2107	BPS	Grimes advises he has orders from DC to put two officers on ship to assure no departure under Customs laws. Worley requests that when Customs arrives he can release day shift to standby at HQ.
2109	BPS	CG, Lt. Coleman, Ops Center, requests update and offers help.
2120	BPS	Tabor calls Parra to advise that since Customs will have two men on board, BP need only two investigators to relieve BP at midnight. They expect to have a doctor located shortly.
2140	BPS	Tabor calls Parra to advise that Arizola will meet Navy doctor at Hebert Hospital and transport to dockside along with "Prevention of Departure Notice." Sell will advise when to bring doctor on board. He also suggested we meet Russian diplomats and offer them a ride to Belle Chasse.

Time	Station (Log)	Text
2200	Customs	USN Medical Doctor is located for BP.
2205	DOS	Soviet desk calls Mark Parris to ask about interpreter and whether she should call Matlock for NSC clearance on press guidance.
2210	Customs	Backup units are in position.
2228	Customs	Budzeyko and Rector are on board the vessel.
2230	BPS	Sell and Weldon depart for Belle Chasse. District officials have doctor in tow. Orate from Customs arrives. Parra advises a van is ready to transport party from dock to neutral spot. Ellis enroute to offer diplomats a ride.
2250	Customs	Sell and Thessin, DOS, [Error: Thessin still enroute] are on board the vessel.
2250	BPS	Tabor gives Berg an update. Note: Sell advised after his last call to DC that Secretary Shultz has been briefed. DOS has press statement.
2307	BPS	Tabor calls Ortiz and briefs.
2320	DOS	CG initiates conference call to give update and take questions from conferees.
2323	BP	Spurlock and Vannett are out of service.
2328	BP	Spurlock and Vannett complete their tour of duty.
2336	BP	Collette advises that Thessin is with him; the shipping agent is going to pick up the other two gentlemen. Collette asks if the DOS rep is on the vessel.
2336	BP	Worley reports in service and indicates that the DOS rep is with him in the cabin. Collette hears report also.
2337	BPS	Worley advises that Sell is on board in the Captain's quarters. Thessin enroute to boat location and the shipping agent picked up the Russian officials.
2340	Customs	BP advises Customs that the Russians have arrived at the airport and will proceed directly to the vessel.
2400	USCG	CG Hq. initiates a conference call between CG, DOS, White House situation room, INS, DOJ, and Customs. Parties discuss the situation and the various options available.

October 26, 1985

Time	Station (Log)	Text
0017	BPS	Worley reports that Customs refuses to allow the shipping agent to board the vessel. Orate calls Allison who requests the shipping agent call him. Permission denied.
0018	BPS	Tabor asks Worley if Sell wants agent on board. Yes.
0025	DOS	Thessin calls to advise that Sell and the Navy doctor are already on board the ship. He reviews the legal situation with Hergen. They agree first priority was for US doctor to examine Medvid, then escort him from vessel if possible.
0032	BPS	Tabor advises Customs their HQ relented and agreed to allow agent on board.
0042	BPS	Tabor briefs Parra.
0045	Customs	Russians arrive on board vessel.

Time	Station (Log)	Text
0051	BPS	Tabor calls Worley to ask if there is any traffic and he advised no. There is no contact with the crewman. Apparently the ground rules are being laid by all parties.
0115	BPS	Worley advises Tabor ground rules have been laid but it will probably be a while before the crewman becomes involved.
0116	BPS	Orate briefs Customs.
0137	BPS	Worley advises Tabor that a difficulty arose -- they were ordered off the ship but refused. Sell is leaving ship with diplomats who intend to confer with higher ups.
0145	BPS	Tabor gives CG update.
0145	BPS	Collette out of service at Hq. He reports that DOS rep. Thessin states there were more than two Russians who arrived.
0147	BPS	Tabor advises Hergen, DOS, DC, of 0137 development. Hergen asks that Sell telephone him when he lands.
0155	BPS	Tabor advises Caplinger and Parra of manpower requirements for later. Tabor advises troops will be on board at 6 AM. Caplinger advised "Prevention of Departure Notice" was served.
0155	DOS	Sell advises that he boarded vessel at 2300 with the Navy doctor. The master refused to allow Sell or the doctor access to Medvid. Sell advises that Medvid is sequestered and no Americans are with him. At approximately midnight, Bondin boarded the ship and insisted that Sell leave, but said Immigration and Customs officials on board could remain. Bondin left for about one half hour to see Medvid and returned to report that Medvid was physically in fine shape. He again insisted that Sell leave the ship since Soviet law applied on board the ship. At this point, INS officials served the master with an INS order stating the ship could not depart until INS had an opportunity to interview Medvid and ascertain his status.
0212	BPS	Weldon advises Sell and diplomats are returning to vessel. Sell ordered to do so by DOS. Tabor to alert CG to standby.
0214	BPS	Tabor calls CG and Lt. Commander advises that since response time will be one hour if needed, CG will move a vessel into the river, get close by, but will stay out of sight.
0215	DOS	EUR/SOV calls Sell and determines that no American has seen Medvid since late afternoon. Sell advises there will be 6 Americans on board when he returns to the vessel.
0225	DOS	EUR/SOV briefs DOS Operations and White House Situation Room.
0235	BPS	Tabor advises Worley that DOS wants to confirm if Sell is back on board ship. Sell requests a list of US personnel on board be transmitted to Robinson of DOS. There is a list of nine. Worley reports they have been moved to a stateroom and no further dialogue is scheduled until 11:30 AM. DOS asks that a message be relayed to Sell to report in at 7:30 AM EDT and be prepared to receive instructions at 8:00 AM EDT.
0251	DOS	Tabor advises that Sell returned to the vessel and reported an "agreement" that there will be no further communication between the two sides until 11:30 A.M. CDT. All Americans adjourned to a stateroom.
0300	Customs	(BP advice) Sell advises that all requests so far were refused. Russians will continue talks at 1130.

Time	Station (Log)	Text
0400	BPS	Tabor advises CG all is quiet. CG has one vessel in the river which will anchor near, but out of sight of the M/V Marshal Konev.
0550	BPS	Tabor gives Brandemuehl complete update.
0615	Customs	Written message is taken to the vessel for Sell. Near confrontation at gangway when four crew members attempt to block Customs man.
0627	BP	Bashaw and Stansel are in service and begin their tour of duty.
0630	DOS	Sell indicates that the Americans slept on chairs and the floor but have not seen Medvid nor do they know his whereabouts. Sell advises a CG Cutter is lying out of sight just around the bend in the river and recommends authorizing the CG to bring it into sight. CG is advised but will stay in position until receives word from DOS.
0637	BP	McDonald is out of service at Belle Chasse.
0638	BP	Weldon is enroute to station with Sell.
0638	BP	Swider and Sullivan are out of service at Belle Chasse.
0646	BP	Reynolds and Stansel are out of service at Belle Chasse.
0700	Customs	Shift (Customs) change. On board S/SA's Sullivan and Erkin.
0705	BPS	Weldon and Sell arrive at Hq. Sell is apprehensive about gangplank being lowered to allow anyone else on board.
0800	Customs	Grimes updated by Allison.
0815	DOS	USCG calls Hergen to request advance notice of plan to remove seaman from vessel by force and to advise that the CG is not trained nor equipped for special operations and that the FBI should be contacted regarding such assistance.
0830	BP	Tabor and Worley communication (concerning USSR vessel).
0855	BPS	Tabor calls CG and is advised that CG will hold their position as requested by DOS.
0900	Customs	Grimes in. Budzyko and Rector arrive for debriefing.
0915	BPS	DOS advises that (interpreter) Ross Lavroff arrives from Seattle at 6:30 PM. Sell advised and requests Lavroff be brought straight to the dock for instructions.
1005	Customs	Sell says he doesn't expect any change until 1130 meeting.
1020	BPS	Worley reports relief of officers aboard ship was accomplished without incident. US officers present remains at three INS and two Customs.
1035	Customs	DOS press office calls to advise they can now receive press calls.
1100	Customs	Briefing of senior enforcement managers.
1100	DOS	CG calls to discuss their position regarding possible removal of Medvid by force.
1114	BPS	Parris, DOS, asks to relay message to Soviet reps that Soviet Embassy wants them to telephone.

Time	Station (Log)	Text
1130	DOS	Dougherty, US Customs calls and advises INS reps saw defector 9:30 last night held in sick bay, tied to bed with towels. Soviets on ship allege he tried to commit suicide. Note: report is inconsistent with INS report that no Americans had seen him since 5:00 P.M. last night.
1145	DOS	McBrian, Dept. of Treasury, Office of Enforcement (U.S. Customs), requests on behalf of Secretary Baker, clarification of who in DOS will determine when the ship can leave, and is informed that Whitehead will probably make that determination; cable will follow; ship not to leave prior to DOS notification.
1146	BP	Worley requests a check with CG to see if there are any regulations governing "Jacob's Ladder" on anchored vessel.
1154	BP	Worley is advised negative; CG says there is nothing prohibiting the ladder.
1205	Customs	Vessel agent is refused boarding by Allison.
1210	BPS	Reynolds advises the Russian officials are back on board the vessel.
1215	DOS	CG liaison advises there are three CG vessels moving into area in addition to two vessels already there.
1220	Customs	Green briefed by Grimes.
1220	DOS	Sell reports captain does not want Americans roaming around ship, he wants them confined to a room. Sell reports ladder over side of ship; not known if there before. A Soviet ship, the Nikolai Karamzin, passed overnight; raises possibility that Soviets transferred Medvid to outgoing vessel; raises question of need to intercept this vessel before it leaves international waters in 6-8 hours.
1230	Customs	BP advises there is no headway in negotiations.
1300	DOS	Sell reports Bondin talked to Kuleshov who reports he talked to Dobrynin who said the Soviets cannot begin to discuss meeting until after 3 on Sunday. Bondin insists Medvid remain on ship (time approximate).
1300	DOS	Palmer requests Rondeau to relay to Meese, request that DOJ take the lead in organizing possible effort to remove Medvid from ship.
1300	DOS	Sell requests authorization to ask Bondin to see Medvid, without questioning him, to assure that he is on the vessel and wants to tell him that we have reason to believe he may have been transferred. If a meeting does not take place soon, we may have to stop the second ship (time approximate).
1300	DOS	Sell clarifies US pilot is on board the second ship which makes it unlikely Medvid was transferred while the ship passed. However, there is a small chance a transfer took place prior to boarding of the pilot and the ship's departure (time approximate).
1304	BPS	Sell calls to report that since Soviets have stated no dialogue will be held until tomorrow, he is returning to the ship and will insist that he and the Navy doctor be allowed to see the individual. He does not expect his demand to be granted.
1314	BPS	Brandemuehl requested developmental information on chronological log which is being faxed to central office.
1345	Customs	All US personnel ordered off ship by vessel master, but politely refused by our people.

Time	Station (Log)	Text
1356	BP	Reynolds advises Sell is back on vessel and doctors have been exchanged.
1400	DOS	Sokolov talks to Palmer and advises that the DOS rep. and the doctor can see Medvid on the ship. Palmer accepts, but makes it clear this does not satisfy the request to meet at a neutral location. Sokolov was told that if the Soviets do not agree to a meeting, we will remove Medvid at noon on Sunday. Sokolov asks us to get word to Bondin to call the Embassy.
1410	Customs	Sell is off ship, says negotiations failed; he will contact DC.
1419	BP	Reynolds and Worley need DOS rep. as soon as possible. Have Jim come to bank and they will get him to the boat.
1424	BPS	Sell requests name of neutral vessels in port or possibly pilot ship that can serve as a meeting place. Sell and Soviets are on way to ship to negotiate.
1437	BPS	Brandemuehl advises there is a plan (but not approved) to forceably remove, possibly tomorrow.
1445	DOS	Whitehead calls Dobrynin.
1450	BPS	Worley requests Vannett come on board since he can recognize crewman.
1500	DOS	INS reports Sell advises that he has seen Medvid and he is in good shape. The Soviets ask the Americans on board to leave, but Palmer instructs all Americans to remain on board (time approximate).
1500	DOS	Rondeau tells Parris that INS has been charged to develop an operational plan and to take the lead to implement the plan and present it to NSC. Parris insists that DOS have the final word on when and if the plan is implemented.
1500	Customs	Shift change.
1503	BP	Worley and Goodwin advise that Bondin and Sell came on board together. Sell told to wait 10 min. but has been waiting 30 minutes.
1505	BP	Reynolds requests that Parra be advised that Shepler has been requested to stay, by DOS.
1510	BPS	Worley advises that the Captain is allowing Vannett, Sell and the doctor to view the seaman.
1515	DOS	Sell reports on his examination of Medvid (time approximate).
1525	BPS	Cpl. George, HP, advises must write a report on the crewman, since HP first to encounter him, and needs his name.
1535	BPS	Worley calls Sell's office and advises that the seaman is on board the Konev. They did observe him. He is in relatively good health and Sell will call in as soon as he can get ashore.
1545	DOS	Sell reports that INS Commissioner is on his way to NOLA. Parris reports INS rep is being sent to be ready to remove Medvid.
1552	BPS	Reynolds advises that Sell is ashore.

Time	Station (Log)	Text
1552	BPS	Tabor is advised that Brandemuehl talked with AG, DAG, (Justice) and the Commissioner and was told to develop a contingency plan and submit it for approval. O'Connor suggested and Brandemuehl will request to Commissioner 4-5 BORTAC agents (up to 20). AG questioned if CG should do this. 215 authority quoted. Start plan and they will advise when travel plans are in order. AG assisting in interviewing NYC interpreter. Have BPAs make indepth memo to CPA.
1600	BPS	Dr. Caruthers, Sell and Vannett are allowed to examine the crewman on board the ship (time approximate).
1600	Customs	Erkin and Sullivan debriefed by Grimes.
1610	Customs	Dougherty briefed by Grimes.
1615	Customs	Backup units report news media at launch area.
1621	BPS	Sell advises he will call his department to read the medical report.
1630	Customs	CG advises they are considering setting up safety zone around vessel.
1654	BPS	Sell advises Tabor to call or fax copy of a list of neutral ships to DOS in DC, and a copy to Thessin aboard ship.
1700	Customs	Grimes informs TV Channel 8 that it was not USCG who returned crew member to vessel.
1700	DOS	Palmer talks to Whitehead and then calls Rondeau to underscore that the DOS will decide whether or not to implement a plan to remove Medvid from the ship.
1700	DOS	Palmer-Sokolov talk and agree they will be the channels of communication on issue per Whitehead/Dobrynin conversation. Sokolov advises he had no instructions from Moscow but he would contact Palmer as soon as he had information. Palmer reiterated need to resolve issue which will permit interview.
1717	BPS	Agriculture Department calls to request information concerning the ship because the department has the responsibility for grain leaving the US. Tabor refers call to DOS.
1726	BPS	Tabor advises DOS that will send fax copy of doctor's examination report of alien crewman, plus statement of Vannett who can personally identify the individual.
1740	BPS	Tabor referred grain inspections questions from DC to DOS.
1800	BPS	A copy of the doctor's report and statement from Vannett are faxed to DOS. A list of all ships in port was obtained from Captain of the Port and given to Sell; faxed Soviet Desk/DOS/DC. Memos from arresting agents received by CPA; copies faxed to CO (time approximate).
1842	BP	Weldon advises that he and Sell have gone ashore, everything relaxed here.
1845	CO	Bonnette receives information from Mrs. Leupp to contact Commissioner Nelson advising him that Leupp and Brandemuehl have been dispatched to NOLA.
1846	BPS	Dr. Caruthers' medical report, plus Vannett's observation report were successfully transmitted to DOS, and telefax received in White House. Originals are filed in the safe in DCPA's office.
1915	CO	INS Communications calls to advise that Rondeau, Special Assistant to the Attorney General, is trying to make contact with Nelson.

Time	Station (Log)	Text
1930	BP	Local repeater down, no contact with vessel-party. Huerta called in.
1930	DOS	Thompson of NSC calls Parris and indicates Rondeau called NSC to seek guidance on who should take the lead on preparation of operational plan. Parris indicated DOS understood DOJ had already prepared plan for presentation to NSC.
1935	DOS	Parris tells Rondeau at DOJ that despite having formal requests that they put together a plan to remove Medvid from ship if necessary, nothing has been done. Parris notes that Meese should be informed that DOJ looks bad already over this case and will look worse if it does not get its act together on contingency plans.
1941	BPS	CG Intelligence advises Tabor that the CG is ready to assist in any way possible.
1955	DOS	Jensen, DOJ, calls Parris. Parris briefs Jensen, and emphasizes the need for a fully developed and approved operational plan. Parris tells Jensen DOS does not want the use of firearms, or loss of life if any operation is necessary. Jensen said that DOJ will develop tactics on the scene, and that all agencies should keep in close touch in NOLA and DC. DOJ not ready at this point to instruct its people not to use force. Jensen confirms that DOJ officials on scene have been requested by Meese to develop an operational plan, and that DOJ will be ready to coordinate and proceed as necessary tomorrow.
1955	CO	Bonnette contacts Nelson and Kisor and advises them of Rondeau's call. Nelson and Kisor indicate they have advised Meese, McGuiness and Jensen of the situation in NOLA. Brandemuehl and Leupp are enroute to NOLA. Negotiation with the Russian Embassy is in recess until approximately 12:00 noon.
2005	CO	Bonnette contacts Rondeau and advises her of the above.
2010	CO	NY District Director Sava, INS, advises that he has dispatched two investigators to find Padoch. They will attempt to obtain statements concerning what was said between the officers who apprehended Medvid and the interpreter and, secondly, why was the information released to unauthorized individuals.
2045	DOS	Parris calls Captain Daniell (CG) and asks that the CG launch be moved back to 1000 yards from the Konev. Parris requests CG assistance in keeping press away from the Konev tomorrow.
2105	DOS	Talbot reports that CG wants to know the identity of US vessels in or on the way to Soviet and Bloc ports.
2107	BP	Huerta advises that the communications system is OK. Interference is coming in from somewhere else and there is nothing to be done about it.
2119	BPS	Tabor calls DOS and Lysyshyn advises all is status quo aboard the vessel according to Customs. Advises Ross Lavroff boarded the vessel approximately one hour ago.
2120	DOS	Parris requests that a list be developed of neutral, third countries with Consulates in NOLA, which could be used as possible meeting sites.
2120	BPS	Huerta reports the radio system is down due to unidentified interference. Consulted with Ritzman telephonically. Ritzman enroute to help.
2130	DOS	Tabor calls; Thessin is on the ship, advises all is quiet on the ship.
2155	DOS	McBrian, Treasury, called about meeting tomorrow. No plans yet.

Time	Station (Log)	Text
2205	BP	Huerta advises Tabor that Ritzman is enroute to Poydras. Will try something else.
2215	DOS	Palmer reports to Whitehead, McFarlane and Meese via conference call. The President has approved DOS as agency in charge. Department's strategic plan to attempt to persuade the Soviets to have Medvid med-evaced from the boat, and not wait past nightfall to take Medvid off vessel. Sell is to be informed and told that as DOS rep he is in charge in NOLA. Excessive force not to be used.
2300	Customs	Shift change -- Stein in, Grimes out.
2300	DOS	President has approved the plan and Sell needs to be notified.
2300	BPS	Tabor calls DOS and is requested to have Sell call DOS. The White House has approved a plan to implement by tomorrow afternoon.
2345	BPS	Orate, Customs, asks what is the nature of the hold we have on the alien on the ship. Tabor explains and cites 8 CFR 215.3.
2347	BP	Contact made with Weldon on vessel. Everything is alright, getting ready to secure for night (working aux. ant.).
2347	BP	Collette is in Metarie. Radio is breaking up a little but is readable. Collette is enroute to OS.

October 27, 1985

Time	Station (Log)	Text
0001	BPS	Brandemuehl, O'Connor and their teams arrive at Sector. Operational teams established (time approximate).
0042	CO	Bonnette is advised by Leupp to contact administrative assistants and ask them to come in on Sunday at 6:00 a.m., EST. This is accomplished.
0045	Customs	Grimes checks in from home and says that he has been informed that BP is to have a meeting at 0930 with all agencies to develop an ops-plan (if needed) to take the crewmember.
0214	DOS	Sell asks that Parris and Palmer give him guidance on the meeting. How do they handle it if Medvid says he wants to return to ship? Sell plans to reboard ship within next hour.
0330	Customs	Sell is on vessel.
0509	BP	McDonald is out of service at Belle Chasse launch.
0545	CO	Sector Hq. advises that they will send an operational plan by wire for review for submission to Kisor and the Commissioner. Further information received that McFarlane, NSC, will be on Face the Nation. Kisor briefs McFarlane.
0600	Customs	Allison in.
0610	CO	Bonnette contacts McGuiness who requests that Eastland, PIO Officer, DOJ be notified of what transpired today. Jensen would like a copy of the operational plan.
0615	CO	Bonnette Contacts the DDD, NYC. He will attempt to contact the investigators and check on statements requested previously from interpreter Padoch. Will call back. SCI Fress [Friess], returns call and advises that they have located the interpreter upstate and are currently taking statements.

Time	Station (Log)	Text
0615	Customs	Allison is advised by BP that the meeting has been postponed. BP is going to write their own ops plan and submit to DC for approval before giving to other agencies.
0630	DOS	Wilson contacts USCG to request a list of third flag vessels in the area. DOS may need information. Wilson briefs USCG on DOS's lead role and their desire for not using excessive force. The USCGC Salvia is on the scene at South West Pass. A CG 82' patrol boat is up river and out of sight as well as various 41' and 32' port security boats. USCG is prepared to establish a security zone around the Konev if DOS requests.
0630	CO	Bonnette contacts Eastland and advises of current situation.
0640	CO	Bonnette contacts Kisor at the White House situation room. Kisor is working on a statement to The President.
0700	Customs	Shift change.
0725	CO	Fress [Friess], NY Supervisory investigator advises that Padoch's statement was taken by Bourke, anti-smuggling investigator at Kerhonsken, NY. The statement will be transmitted verbatum, telephonically and transcribed. Padoch indicated that she contacted a Ukrainian veterinarian, Dr. Sas-Jaworsky, who resides in Abbeville, LA. We will attempt to contact him. New Orleans has been notified and will seek to obtain a statement from Dr. Sas-Jaworsky. Bourke will hand carry Padoch's original sworn statement to Central office.
0755	BP	Collette requests a call to the Belle Chasse launch to have them send launch to ship. Done.
0802	CO	Brandemuehl advises that he will send up plan. Bonnette contacts Kisor.
0830	DOS	Sell calls to advise he has returned to the ship. Interpreter asked to depart; rejected. Sell is advised of Meese, McFarlane, Whitehead conversation that the President designated him in charge in NOLA and that DOS was in charge overall.
0835	CO	Bonnette contacts Bourke and asks him to thank Padoch and to get a release from statement.
0840	Customs	Baton Rouge, Houma, Gulfport offices and CET placed on standby.
0845	CO	Telecopy of statement made by BP agents at New Orleans is received.
0900	Customs	Offgoing shift debriefed. CG has two UTB's at vessel area.
0900	DOS	Cable to Moscow (situation report) #4 to Ops Center.
0905	CO	Nelson and Kisor currently at the DOS situation room.
0915	CO	The INS Communications Supervisor is advised to locate someone who can activate the secured telephone down in communications and put it on standby.
0930	CO	Bonnette contacts Walsh regarding setup of security phone with NOLA. Communications cannot at this time open up secured lines. They have no one who is knowledgeable in that area.
0930	Customs	Grimes, Allison, Menchel and Cupp are out to BP Command Post.
0945	DOS	Sell advises Simons is arriving. He suggested Simons coordinate land operation and Sell will be the ship contact. Sell advises Bondin wanted the interpreter to leave the ship but did not object when Sell had him remain on board.

Time	Station (Log)	Text
0950	CO	Kisor requests that a messenger be available to pick up operational plan and deliver to Jensen. Dispatch both messengers at 1215 to deliver to Jensen and Meese.
1010	DOS	Sokolov calls from Soviet Embassy.
1045	DOS	Sell calls to discuss plan to board the Konev.
1048	BPS	White House situation room confirms receipt of draft of contingency plan.
1126	USCG	DOS requests that the CG establish a security zone around the M/V Marshal Konev to control unauthorized access and allow for unrestricted activity of authorized U.S. government personnel. DOS also requests that the CG position the CG Cutter Salvia 100 yards astern of Marshal Konev and CG Cutter Point Verde out of sight but close enough to be on scene within 30 minutes if so directed. Captain of the Port New Orleans issued an order to the master informing him the vessel was not to move until cleared by U.S. Customs Service. DOS delivered the order to the master.
1130	DOS	DOS requests USCG to locate five vessels in the NOLA area that can be used for interview of Medvid.
1131	BPS	CO confirms receipt of draft contingency plan.
1140	CO	Operational order arrives at Communications telephone line.
1200	CO	Commissioner is advised of the witnesses sworn statements in NOLA.
1210	DOS	DOS requests USCG to move USCGCs Point Verde and Salvia into position to maintain surveillance.
1210	CO	Nelson and Kisor shifting to the DOS Russian desk. They will be with Palmer. Bonnette to advise McGuiness and Rondeau of update. McGuiness notified.
1220	BP	Weldon advises they need to talk to Sell.
1310	CO	Rondeau is notified. Prior attempts were unsuccessful.
1320	DOS	Palmer has a call-meeting with INS, DOS, Treasury, and CG reps. to discuss operational plan.
1327	CO	Brandemuehl is advised that operational plan is being reviewed by Commissioner Nelson and Kisor at the DOS/DOJ and can expect a reply shortly.
1330	BP	Stansel advises that the CG Cutter is at location.
1430	Customs	Grimes and group return to CP. BP is getting final approvals from DC on ops-plan. Agency briefing set for 0830-0900, 10/28/85, with action scheduled for 1130-1200.
1430	DOS	Palmer discusses operational plan in detail with INS, Treasury, CG and DOS reps.
1500	DOS	INS reports Sell advises that he has seen Medvid and he is in good shape. The Soviets ask the Americans on board to leave, but Palmer instructs all Americans to remain on board (time approximate).
1500	Customs	Schulte and Eliff assigned to liaison at BP Command Post.
1500	Customs	Shift change. Stein out.

Time	Station (Log)	Text
1510	BP	Thessin transmits message through Goff to Sell that the two Soviet diplomats have requested a launch to go ashore, apparently to make a phone call.
1510	DOS	Palmer instructs the agency reps to reassemble Monday, October 28th, 1985, at 1000 regarding operational plan.
1530	Customs	Weather alert received from CG, "condition three". BP notified of Customs concern regarding vessel matters prerogative in weather situation.
1550	CO	Kisor advises that the operational plan is agreed to in principle, to go tomorrow. The weather is getting bad in NOLA. Kisor advises that he will be back at the DOS the following day, 10/28/85 at 10:00 A.M.
1600	BP	Reynolds is out of service at Belle Chasse launch.
1700	DOS	Parris advises need to get cable to Secretary on legal and political precendents and justification for use of force by midnight.
1700	DOS	Revised operational plan taken to Op Center to be datafaxed to all appropriate and also put in cable to secretary.
1700	Customs	Shulte reports he has a copy of the BP ops-plan and is bringing it to CP.
1730	CO	Bonnette terminates situation room at Central Office.
1745	Customs	Schulte arrives with ops outline and briefs CP.
1800	BPS	DOS revised copy of contingency plan received; authority to implement included.
1800	DOS	Simons advises Sell is back on boat and all is quiet. Requests Russian translation of statement be prepared for use by Medvid.
1800	Customs	SAC Wright in.
1830	Customs	Assignments made for action contingency. Grimes notifies BP that they will not be allowed to dress as Customs officers.
1900	Customs	A/C Green is briefed by Grimes.
1947	BP	Plaquiemines Sheriff's office advises that another ship has broken anchor and is up against bank behind Russian ship. Soviet ship is moving. Put a call through to Plaquiemines officials.
2015	DOS	Whitehead to get copy of cable regarding precedents and legal basis for forcible action delivered to Operations Center, by Monday.
(?)	Customs	DOS requests that no one be allowed to go or come from the vessel (time approximate).
2030	DOS	Soviets have again requested reduction of Americans present on ship. Simons puts them off and advises will let know when he hears from Washington in the morning.
2045	DOS	White House situation room calls to advise they are having difficulty datafaxing operation plan to NOLA.
2100	DOS	Operations Center is advised that the cable on precedents and legal basis for use of force had gone out.

Time	Station (Log)	Text
2143	BP	Mandel advises party leaving. ETA in 20 minutes.
2259	BP	Reynolds advises Customs is ready to make shift change. Any estimate for Imm./Caplinger advises 20-25 minutes.
2300	Customs	Shift change.
2333	BP	Goff advises Shepler is on board.
2356	BP	Sullivan and Lomas in service at launch site.
2400	Customs	Off going shift debriefed. Stein in.
		October 28, 1985
0012	BP	Goff and Sullivan advise re position of vessel.
0250	DOS	White House situation room calls for an update. Nothing new to report.
0410	BPS	Radio system is inoperable.
0500	Customs	BP advises that action is now set for Tuesday morning with planning meeting for 1700, 10/28/85.
0545	BP	Advised Lund of 23 crewmembers Belle Chasse and also advised CBS News is on the scene.
0600	Customs	Allison in. Weather conditions updated.
0605	DOS	DOJ communications calls to say they received a confidential message from NOLA and will retransmit to DOS by fastest means.
0700	Customs	Shift change.
0700	CO	Check with Communications. They have classified document. Dispatched message for.
0710	Customs	A/C Green updated by Allison.
0715	BP	Ritzman asks Goodwin if he is to stay on bridge with portable or come back to the station.
0715	CO	Tabor advises that they originally planned to hold up the operation for 24 hours due to the approaching hurricane. However, preliminary indications now are that they can go this afternoon if they get the go ahead from the DOS and DOJ. He was advised by this office that Palmer needs a decision by 8:40 A.M. today from the operational group. Revised plan will be delivered to Kisor at Jensen's office.
0718	BP	Unable to contact Ritzman for an answer to 0715 entry.
0728	BP	Notified 4th district of van on top of bridge furnishing communications. They are making note not to ticket.
0800	Customs	Grimes in.
0810	CO	Brandemuehl called and advised he is enroute to Sector.

Time	Station (Log)	Text
0830	Customs	Eliff reports that meeting is going on now at USCG Buoy Tender in Belle Chasse. Schulte is attending.
0912	CO	Copies of the chronicalled events to date are provided to the Deputy Commissioner's office and Meissner's office.
0930	BPS	Conference of all agencies involved to discuss operation plan.
0937	BP	Collette advises that the two Russian diplomats are coming off the vessel now.
1000	CO	Meeting with Kisor, Murphy and Shaw, OPS, may go off this afternoon. Kisor requests background papers on the Soviet bloc procedures.
1020	CO	Kisor advises this office to contact the White House situation room and provide them with a briefing to date.
1130	CO	DOS advises that there appears to be a break in negotiations and that the Russians will allow the interview to take place. DOS instructed that no action be taken. However, we can continue our preparations. DOS notified NOLA and Nelson and they reiterated that the instructions to the press were "no comment", and that we take no action until cleared by DOS. Nelson and Kisor are advised.
1130	Customs	Schulte reports that action is delayed until sometime Tuesday. CG is going to send a written notification to the vessel master that the ship may not move.
1132	BP	Collette advises Tabor that the Russian diplomats are going on board with Sites.
1141	BP	Collette advises Sites is on his way back to shore now.
1147	CO	Bonnette contacts Brandemuehl and advises. He will take no action. We reiterate the "no news" statement by INS.
1158	CO	Kisor contacts this office requesting that we contact Brandemuehl and advise the following: 1. We are to find out if the Navy psychiatrist who was dispatched from Biloxi has arrived; 2. DOS would like him to be present during the interview with the Soviet deserter; 3. We are to contact Palmer and advise of our information, and; 4. Palmer requests that we utilize a covert tape recorder during the interview if possible, if we feel that it will not be observed by the individuals involved and more importantly not be construed by the deserter as coercive in any way. Tabor advises that the psychiatrist has not arrived (the Navy psychiatrist). However, they have located an alternative, Dr. Hunt. He will be made available and be placed on the CG vessel. Simons, DOS representative on the scene, agrees with placement of Dr. Hunt on the vessel as a replacement for the Navy psychiatrist.
1200	Customs	BP advises the Russians have agreed to have crewmember interviewed on CG Buoy Tender. This is planned for 1500.
1214	DOS	Commissioner Nelson suggests that interview be taped -- order already given, subject to DOS concurrence. Hergen informs Simons that DOS approves taping of the interview, but only if it can be done unobtrusively, and that INS Commissioner has orally designated Sell and INS officer at the interview as "departure control officers" for purposes of 8 CFR part 215.
1220	CO	DOS notified and asked to relay information to Palmer.
1240	DOS	USCG advises that the Soviets have agreed to allow Medvid to be removed from the Kanev and interviewed aboard a USCG ship.

Time	Station (Log)	Text
1245	CO	Brandemuehl advises that local DOS representative is against the use of the tape; he wants to know who authorized the use of tape. We will contact and reply. The following information was provided: Kisor and Palmer decided that if the tape could be obtained without it being observed, Palmer would like to have it done. Kisor advises that the interview will take place at approximately 4 P.M. on the CG vessel in mid-stream in Belle Chasse.
1300	CO	Lysyshyn, at DOS reiterated that Palmer would like to have it done (tape) only if it can be done without notice and not visible.
1305	CO	Brandemuehl is advised that Palmer, through his secretary, requests that the taping be done without it being visible. A decision is made that Brandemuehl will carry the recorder. The meeting is scheduled for 4:00 P.M. on the CG vessel.
1315	DOS	Palmer okays the taping of the interview, provided it can be done in a completely undetected manner. If it is detectable, the taping is not to take place. Sell to make it clear to Medvid that if he should decide to remain here, he will not be subject to legal prosecution. Palmer advises that a psychiatrist may be on call outside the room, with only an MD present in the room. Both the ship's captain and Bondin will be in the room during the interview.
1318	BP	Collette advises that Sell is coming on board.
1320	CO	Bonnette contacts COINV, and requests that he prepare consensual monitoring request. The request was authorized by Kisor. He will contact DOJ.
1325	CO	Kisor advises that the consensual request preparation is going forward. He requests that Bonnette contact McGuiness and the White House situation room. This was done at 2:40 P.M.
1338	BP	Collette advises that Solomon needs to talk to Sell. Accomplished.
1347	CO	The White House situation room is advised.
1347	CO	Bonnette calls the White House situation room and advises them of the situation at that time.
1355	CO	Bonnette is instructed by Brandemuehl to contact Schmidt and Kisor and have them available for a telephonic conversation.
1400	Customs	Time for interview delayed until 1600. If the meeting takes place, BP requests to immediately remove their hold on vessel, DOS also.
1402	BP	Collette advises that Site requests us to call Customs HQ at 1500.
1405	CO	Telephone conference with DOJ, Commissioner Nelson, Kisor, Leo, Schmidt and Bonnette. The options and the approach were discussed and all was agreed upon.
1419	BP	Ritzman advises to notify Goodwin portable is on standby.
1420	CO	Palmer, DOS, is briefed by Commissioner Nelson.

Time	Station (Log)	Text
1425	CO	Telephonic conference conducted between Commissioner Nelson, Kisor, Brandemuehl, Schmidt and Bonnette. A complete review of the process to be taken during the operation was discussed, as well as the service of I-281, which was reviewed and alternatives discussed. Brandemuehl was advised that the I-281 notice should be filed on the captain and on the crewman in any event, whether the crewman decided to accompany the party or wished to return to Russia Brandemuehl asked that we contact the District Attorney in NOLA, on legal aspects. Schmidt indicated that he would contact. Commissioner Nelson authorizes Brandemuehl to hold the crewman in our custody for a period of 24 hours. The conference is finished at 3:50 P.M. Brandemuehl is enroute with the team to the CG vessel to initiate the negotiations with the Russian and the interview with the alien.
1452	BP	Collette advises that Sell said to pass on that they checked engines on life boat; might mean something (passed to Mr. Solomon)
1600	Customs	Delay until 1630.
1630	Customs	Vessel master requests to CG crewmember ready for pick up.
1630	USCG	DOS requests the CG Cutter Salvia be available as a platform to interview seaman Medvid.
1630	BP	Collette advises they are ready to pick up.
1630	BPS	Seaman is removed by CG cutter from M/V Marshal Konev to Salvia (time approximate).
1633	Customs	Vessel (Konev) captain, first mate, engineer, crewmember, two political officers and Mr. Sell on CG 41' for transfer to CG Buoy Tender.
1636	Customs	Party above board Buoy Tender. Confirmed. A/C Green notified.
1637	BP	Collette advises all American officers are off the vessel (Konev).
1640	Customs	All Customs personnel withdrawn from scene.
1642	BP	Collette and McDonald are in service.
1645	DOS	Congresswoman Lindy Boggs' office telephoned to advise the Archbishop of New Orleans wanted to discuss the Medvid situation.
1649	BP	Worley advises all officers are off the ATT.
1700	DOS	USCG Salvia confirms that all personnel were safely aboard.
1700	Customs	Marine Desk is notified that vessel may now clear in routine manner. Command Post deactivated. Resume normal operations.
1700	CO	O'Connor advises that all are aboard the USCG vessel and that includes 4 US, 4 Russians and the subject. We advised O'Connor that we will be standing by either at the Commissioner's office or at the DOS.
1715	USCG	DOS, INS, Customs Service personnel and seaman Medvid boarded CG Cutter Salvia from Marshal Konev. All CG personnel were isolated from seaman Medvid.
1740	DOS	Parris is informed that Medvid has become nauseous during interview and is now in ship's sick bay with one Soviet and one American doctor.

Time	Station (Log)	Text
1750	CO	O'Connor reports that the CG base received a request from the CG tender to have an ambulance at the CG station in NOLA. This was received at 5:25 P.M. NOLA time.
1755	CO	O'Connor reports that the crewman appears to be in a "spaced out" condition and appears to be disoriented, and not responsive to the questions. Kisor and Nelson are advised. We have relocated to DOS at 8:05 P.M. Meeting was held with Palmer, Nelson, Kisor, Leo and Bonnette. Palmer reports that when the interview began the subject appeared to be ill therefore the interview ceased. He was given an opportunity to go above deck and get some fresh air. At an attempt to re-interview, the individual appeared to be disoriented and non-responsive. Palmer advises that DOS people were told to give the subject a good night rest and have our officers take him to a BOQ at the Naval facilities for a rest. Tomorrow he will be re-interviewed at the Naval BOQ. At this time no time has been set.
1810	BP	Worley advises still aboard buoy tender, everything status quo.
1910	DOS	Whitehead has made decision to have Medvid taken from ship to Navy BOQ on EUR recommendation. After Medvid takes five minutes to respond to question of where he would prefer to go, drinking water in silence, and finally answering, "Home is best."
1920	DOS	Tabor calls to confirm that Salvia was still at anchor.
1930	CO	The CG requests 3 vehicles. They subsequently change that to 4 vehicles, 2 sedans and 2 vans, to be dispatched dock side at Belle Chasse Ferry landing, approximately 2 miles down river. BP is dispatching.
1950	CO	O'Connor advises that the situation on the ship became "touchy" (shouting and scuffling between our officers and the Russians). All is in control. Bondin, the head of the Russian delegation, has left the CG vessel to call the Embassy. Our officers are proceeding too but have not started to take subject deserter ashore. The deserter appears to have some medical problems either an infected arm or broken arm and will require medical attention.
2015	CO	O'Connor advises that Bondin is returning to the vessel. O'Connor states the subject requires medical attention. His arm appears to be broken and was not adequately treated aboard the vessel. The Russians do not appear to have the appropriate antibiotics necessary. All arrangements have been made for housing and security at the Naval Support Facility BOQ at this time.
2025	CO	The Situation Room is briefed.
2030	BP	Note DE: Harbor PD has Polish ship jumper/Goodwin & Tabor advised; advised Vannett.
2030	CO	McGuiness is briefed.
2040	CO	CG vessel indicates that the Russians are resisting our removal of the alien, and have advised that any action taken by the US government will be held against the US government.
2040	DOS	Simons calls and informs Parris that the Soviets (Bondin and Kosov) state they will leave the CG cutter only for the Soviet ship Marshal Konev.
2050	CO	Parris advises higher ups. He contacts the DOS man on the vessel and tells them to offer the Russians the following options, either to accompany the crewman to the shore facilities, or that we will forcibly take the crewman to the shore facilities without them.

Time	Station (Log)	Text
2100	DOS	After failing to reach Whitehead, Parris recommends to Palmer by phone that Sell and Simons be authorized to use force to take Medvid to naval facility. Palmer authorizes use of force.
2105	DOS	Parris instructs Simons that he is to repeat to Soviets our invitation to accompany Medvid to Naval facility. If they refuse they are to be offered transport to the Marshal Konev. If they remain unwilling to allow Medvid to depart for Naval facility, Medvid is to be forcibly separated and given an opportunity to express his willingness to go to the Naval facility. If he refuses, he is to be obliged to accompany Sell and Simons. Other Soviets will be conveyed to the Konev or to the Naval facility as they request and as Sell and Simons think best.
2115	CO	Kisor is advised.
2135	DOS	Hergen stresses that the Soviet Embassy officers can be restrained if they attempt to interfere with Medvid's departure for the Naval facility; otherwise they cannot be detained in anyway. Soviet crew who interfere are subject to prosecution.
2145	CO	Bonnette receives a telephone call from BP agent Vannett at NLL Station, who is calling from the HP Hq. and advises that a Polish seaman, is in the custody of the HP. He is in process of interviewing the individual and will return to the BP Hq. to complete that process. DOS officials at the situation room are so advised, and told that before any disposition is made they will be contacted.
2200	DOS	Simons advises Bondin and Kosov have chosen to accompany Medvid peacefully to Naval facility.
2200	BPS	Request made to arrange escort and proper transportation of the negotiating crew and security group from the Belle Chasse ferry landing to Algiers Naval Support Activity Base (time approximate).
2207	CO	The Russians have chosen to accompany the deserter to the shore station peaceably. No force is necessary. They are proceeding shore side. O'Connor advises that the total party is on the 41 foot CG vessel and enroute to the shore.
2225	CO	O'Connor states that they are all on shore and are heading for the hospital. It will take approximately one half hour as the weather condition has seriously deteriorated.
2230	BPS	The entourage arrives at the dock after leaving the Salvia (time approximate).
2230	CO	White House situation room is advised.
2240	USCG	The party, including Medvid, is transported by CG Cutter Salvia to shore.
2245	CO	Bonnette departed the DOS enroute to INS Hq. Follow up with NLL indicates that the Polish crewman earlier reported at 10:45 is in fact not a deserter but a duly authorized seaman seeking to return to his vessel. Vannett reached Palmer who authorized the crewman to be turned over to the agents for assistance and be returned to his vessel.
2259	BP	Vannett advises DOS is going to provide an interpreter.
2302	BP	Worley advises all personnel are coming off cutter and on to 2 41' vessels. Unit enroute to 8th Naval Dist. Have units stand by at shore location/on scene.
2313	BP	Garcia has visual contact w/one 41 footer.
2319	BP	Caplinger advises he is enroute to NASF/gate at base.

Time	Station (Log)	Text
2339	BP	Note: Base gate advised party on base.
		October 29, 1985
0530	CO	Bonnette calls NLL and is advised there is no change in status. The Russian is still at the Naval Facilities. He is being afforded security by INS officers. No time has been set for the interview of the crewman.
0720	CO	Bonnette contacts Tabor, and is advised that Worley is on site and in charge of the security group at the infirmary (BOQ). All is OK and no action contemplated at this time. Tabor advises that the psychiatrist, who is attempting to make a determination as to the individual's state of mind, requested to talk to the INS internal investigative team concerning statements made by the alien prior to and subsequent to his return to the vessel. Requested to call Brandemuehl.
0730	CO	Bonnette contacts Brandemuehl. He will be enroute to Sector.
0840	CO	Bonnette contacts Ezell at the Executive Seminar and briefs him of the situation. Advises him that the Commissioner, Kisor and Leo are enroute from Washington.
0900	BPS	The entire Russian and DOS delegations meet with the alien crewman (time approximate).
0915	USCG	The Salvia is released.
0945	CO	McGuiness calls and requests a report of the situation. He is briefed, including the Polish crewman. McGuiness asks for a copy of our running log. We will transcribe and provide it to him as soon as possible.
1024	CO	Tabor advises that negotiations are in process with the Russians at the Naval base. The same 4 Russians and the same US team are conducting the negotiations. Crewman is still in custody of the medical facilities with security team on site. Requested that Tabor verify the correct spelling of the individual -- we have several variations thus far.
1050	CO	Leupp requests that the following be passed on to Nelson and Kisor when they arrive at Jacksonville. They should be arriving now. "It appears that there may be a conclusion this afternoon in the negotiations."
1105	CO	Tabor states that subject's name is MIROSLAV Medvid. Therefore, our previous spelling is in error and is to be noted for the record. Further, Tabor advises that the medical exam is almost complete. Tabor feels that the deserter may well desire to go back to the ship. However, he feels that the request may not be valid due to his state of mind.
1125	CO	Bonnette contacts Coster and advises him to provide the information to Commissioner Nelson, Kisor and the group at the conference.
1135	CO	Bonnette calls McGuiness. Phone busy, calls back. Contacts McGuiness and he requests that Kisor give him a call for an update.
1335	CO	Bonnette contacts Leupp, who advises that the subject deserter has made a statement that he does not desire to remain in the United States. This information was relayed directly to Palmer of the DOS via their communication. It appears that DOS will honor his request. Leupp advises that he was advised by DOS that the decision to return the deserter to the ship will be made at the highest level.
1410	CO	Bonnette contacts Kisor. He has the information provided by Leupp directly from Palmer. The Commissioner and the rest of the group at the conference also have the information.

Time	Station (Log)	Text
1500	BPS	Tabor requests that Sector arrange with CG for a vessel to transport the crewman, the Russian entourage, DOS personnel and members of the security team from the Belle Chasse ferry landing to the M/V Marshal Konev.
1630	CO	Austin notifies Nelson and Kisor and all of the reports from the news media and verified by the DOS/PIO that the crewman has requested to be returned to the vessel. He advised further that DOS will handle all media inquiries (as they relate to the negotiations and the re-interview of the crewman and disposition). INS/PIC will handle all inquiries as they relate to the placing of the crewman aboard the vessel initially.
1651	BPS	All personnel involved departed the BOQ/NSA, Algiers, enroute to Belle Chasse ferry landing.
1655	CO	McGuiness is briefed on the above information and is advised that the chronological log will be provided in rough as soon as possible.
1705	CO	Tabor advises that crewman is enroute towards the vessel and expects ETA approximately 20 minutes before he is aboard. Bonnette advises Tabor that CO will be closing down operations within a half hour unless notified otherwise.
1711	BPS	The motorcade arrives at Belle Chasse ferry landing.
1715	BPS	The Russian entourage, DOS personnel and BORTAC team board CG 31' cutter, departing for M/V Marshal Konev.
1735	BPS	CG vessel returns to ferry landing with DOS personnel and BORTAC team; picked up by waiting vehicles; return to HQ (time approximate).
(?)	USCG	DOS, INS personnel and seaman Medvid were transported by CG utility boat from shore to Marshal Konev.
		October 30, 1985
0720	CO	Bonnette contacts Tabor who advises that the crewman was placed aboard the vessel approximately 5:30 P.M. on 10/29, NLL time which is 6:30 eastern. No incidents to report.
0830	CO	Brandemuehl calls in. A conference call between Brandemuehl, O'Connor, Tabor and Austin and Bonnette was arranged. News releases were discussed and it was agreed that Tabor would be permitted to make limited comments concerning the situation as it relates to placing the individual aboard the vessel as there are discrepancies in the local news media as how it transpired. Leupp recommends that a more thorough interview be conducted with Padoch, as the investigator who took the initial statement did not have sufficient background at that time. They need prior statements in which to tell all the circumstances and conversations that were held between the interpreter and the deserter. We felt that it was imperative that prior statements may be available to whomever re-interviews for intelligence questions and all facts. Leupp agrees and will relay to O'Connor. Brandemuehl and Leupp are returning to Washington. O'Connor will remain on the scene for a time ETA Washington 1:00 P.M.
1000	CO	McGuiness, advises Austin to contact Eastland. Done 11:15 A.M.
1124	DOS	Hergen calls US Attorney's office PA. briefs him on Medvid events over the past few days. Hergen explains legal basis for government's actions.

Time	Station (Log)	Text
1130	CO	Bonnette calls Tabor and requests pictures or video tapes of the Russian seaman. Tabor indicates that a mug shot is in the A-file. Will telefax to Austin.
1430	CO	Eastern Region advises that at 2:00 P.M. today the Ukrainian Bar Association and the Ukrainian Human Rights Association filed a request for a temporary restraining order in the case of the Soviet seaman. The application asks that the M/V Marshal Konev be held in port and that the seaman, Miroslav Medvid, be removed to a safe house where he could exercise his rights in a non-threatening environment. The hearing was to be reconvened at 4:00 P.M. for the court to entertain the application.
		November 1, 1985
2010	USCG	Receives call stating CG dealing with Marshall Konev (Medvid) is not over yet. Border Patrol and Customs inquiring as to what can be done to stop vessel. Receives call from local BP stating they are working on another court order to stop vessel until all concerns are taken care of. Vessel is presently up-river bound to grain elevator -- arrives at 2130. 8th is standing by until they receive a request for action and they see the court order.
2048	USCG	DOS operations center notifies CG that as far as they were concerned this case is closed -- per The President's decision that Medvid should go back to vessel and that there are no grounds for further United States intervention.

APPENDIX B

REVIEW OF THE PSYCHIATRIC EXAMINATION
IN THE MIROSLAV MEDVID INCIDENT
and
SUGGESTED GUIDELINES FOR PSYCHIATRIC EVALUATIONS
OF ALIENS WHOSE DEPARTURE MAY NOT BE "VOLUNTARY"

Report

Prepared at the Request of the

Commission on Security and Cooperation in Europe

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APRIL 22, 1987

I. CONSULTATION REQUEST

This report was prepared by a group of consultants initially identified by the American Psychiatric Association (APA), in response to a request by the Commission on Security and Cooperation in Europe, for an independent evaluation of the psychiatric and medical examinations in the Miroslav Medvid case, and guidelines for future psychiatric consultations. Mr. Medvid was a Soviet seaman returned to his ship by U.S. Border officials following what may have been an attempt to seek political asylum. This case has precipitated a number of inquiries and investigations regarding the manner in which the U.S. officials and medical evaluators handled the incident. In addition, U.S. policy toward asylum seekers from Communist-bloc nations, in general, has been brought under scrutiny. This report was generated as part of the investigation authorized under Senate Resolution 353. This resolution authorized a one year investigation of these matters by the Commission on Security and Cooperation in Europe (Helsinki Commission).

The opinions and recommendations contained in the report are the product of the individuals as private consultants and do not represent, in any way, the official policy or views of the APA, its components, or members.

We wish to note that while the consultants were selected for their expertise and experience in the areas of informed consent, determinations of competence, and forensic examinations, (the use of psychiatric expertise to aid in the resolution of legal questions) they had had no actual experience in the unusual and rare evaluation under consideration. Nevertheless, the principles involved in forensic examinations are similar and relevant.

The consultant group was requested to:

1. Conduct a comprehensive and detailed review of the medical and psychiatric examinations of Miroslav Medvid performed in October 1985, and prepare a written evaluation thereof, to include consideration of a) the physical and emotional environment in which such examinations were performed and the impact these environments may have had upon the examination, and b) the possibility that Mr. Medvid was under the influence of drugs at the time of his examinations and, if so, determine the impact this would have upon his decisions and actions;

2. Identify the medical and psychiatric standards applicable in cases regarding suspected asylum applicants from the Soviet Union and Soviet-bloc

countries and determine if the examinations performed in the Medvid case were adequate;

3. Advise the Commission of appropriate methods for handling suspected asylum applicants from the Soviet Union and Soviet-bloc countries from a psychological viewpoint;

4. Submit a written report of the aforementioned to the Commission; and,

5. If so requested by the Commission, the Contractor shall appear before the Commission to discuss his findings and respond to questions related thereto.

II. SEQUENCE OF EVENTS

On October 24, 1985, a Soviet seaman, Miroslav Medvid, jumped from a Soviet grain freighter docked in New Orleans, and swam ashore. He was taken by local residents to the New Orleans First District Police station. Because of his inability to speak English he was unable to communicate with the police. He spontaneously left the station but returned within 30 minutes. He was eventually transferred to the Border Patrol which arranged for him to speak with a translator fluent in Ukrainian. Although the translator felt convinced at the end of an hour's conversation that the seaman had asked for political asylum, the Border Patrol agents deny that this was communicated to them. They interpreted the situation as one of the daily occurrences of "ship jumpings" and ordered him to be returned to his vessel. As the launch approached the ship, Mr. Medvid exchanged words with the first mate aboard the freighter and then jumped back into the water and swam to shore. He was subdued and returned, with his hands bound, by several Soviet crewmen who had been brought ashore by the launch operator.

The State Department was then notified of the incident, and they immediately requested the Coast Guard and Customs to detain the ship and dispatch representatives to the area. Beginning at 2:45 p.m. on October 25, Border Patrol and State Department representatives remained on board, although not in continuous contact with Mr. Medvid, until he was transferred to the U.S. Coast Guard cutter "Salvia" three days later. He was noted to have a bandaged forearm which the Soviet captain said resulted from a self-inflicted wound shortly after Mr. Medvid had been returned to the ship.

On October 26th a physician, Dr. James Caruthers USN, was brought aboard and performed a cursory medical examination. On the following day Mr. Medvid was transferred to the U.S. Coast Guard ship for an interview to clarify his intentions. A psychiatrist, Dr. William Hunt USAF, was brought aboard but was not present during the interview by State department officials. U.S. officials decided to take Mr. Medvid ashore for further observation and interviews because his communicated intentions did not seem clear. In the presence of Soviet officials, a psychiatric interview was performed on the evening of October 28th for one hour. Another physical examination was also performed. The following morning the psychiatric interview was continued for two additional hours. During these interviews and those with the State Department officer, Mr. Medvid claimed that he fell off the ship and was amnesic from the time he hit the water until waking up back on his ship. He persistently maintained that he wanted to return to his ship and the Soviet Union. At 2:45 pm on October 29, US officials decided to let Mr. Medvid return to his ship after he signed a statement confirming his stated wish to return to the U.S.S.R.

III. SOURCES OF INFORMATION

The major sources of information made available to the consultants were the:

1. Psychiatric Report by Dr. William Hunt dated 10/30/85.
2. Medical Examinations by Dr. J. M. Caruthers performed on 10/26/85, 10/28/85, 10/29/85 (Reports dated 10/26 and 11/6).
3. Hearing transcripts before the Subcommittee on Immigration and Refugee Policy of the Senate Judiciary Committee, 11/5/85, 11/7/85.
4. Hearing transcripts before the Subcommittee on Immigration and Refugee Policy of the Senate Judiciary Committee, 2/5/86, 3/7/86.
5. Report by the Subcommittee on Immigration and Refugee Policy for the Senate Judiciary Committee, July 1986.
6. Hearing and Markup before the Committee on Foreign Affairs and its Subcommittee on Europe and the Middle East, 11/7/85.
7. Statement from Dr. W. E. O'Malley before the U.S. Senate Committee on Agriculture, 11/14/85.
8. Letter from Dr. Larissa Bilaniuk to Senator Humphrey dated 5/30/86.
9. Deposition of Dr. J. Caruthers- 9/13/86-Ukrainian-American Bar Association et al. v. George P. Shultz et al.
10. Information provided by Commission Investigators to the consultants during our deliberations.

IV. REVIEW OF THE PSYCHIATRIC EXAMINATION

Before beginning the review of the report and the psychiatric evaluation itself, we would like to emphasize our appreciation of the difficulties facing a physician in these circumstances as well as the fact that retrospective reviewers will not have all of the factual material available. This review was conducted under the assumption that there was only one individual who was seen and evaluated by U.S. officials over the sequence of events.

The first medical evaluation occurred on October 26 aboard the "Marshal Konev." Dr. J.M. Caruthers performed a total of two or three physical examinations on Miroslav Medvid. It is unclear if Dr. Caruthers' initial assignment was an independent evaluation of "voluntariness" or as an adjunct to the psychiatric evaluation. After the examination aboard the Marshall Konev, the medical evaluation was conducted in tandem and in consultation with Dr. Hunt. Dr. Caruthers brought only a stethoscope and a light for the first examination as the State Department wanted "a very low key" presence of a physician. He testified that the purpose of the examination was to determine 1) whether he was alive, 2) whether he was the same person that "we" had a photograph of, and 3) whether there was any immediate life-threatening medical situation that needed intervention before further proceedings. Dr. Caruther's conclusions following this brief exam was that there was 1) a minor injury to the left arm, 2) anxiety, and 3) no evidence of altered mental status from medications/drugs.

A more extensive physical examination was performed on October 28. At that time it was noted that he had an oral temperature of 100.4 degrees F, a 2-3 day history of nasal congestion, cough, and sore throat. A superficial laceration of his left wrist with sutures was noted as well as some bruises on his right arm that had not been noted on the earlier examination. His conclusion following this examination was that there was "no evidence that patient is physically incapable of participating in his negotiations."

The physical examinations, like the psychiatric, were performed under difficult circumstances. The first, aboard the Soviet ship, was incomplete. During this interview no history was recorded and apparently none was taken from Mr. Medvid directly. Although Dr. Caruthers concluded that there was no evidence of an altered mental status from medications, the history obtained from the Russian physician two days later revealed that he had been given psychotropic medications. Since this was the first time he was seen by Dr. Caruthers, it was highly speculative for him to have estimated the effects of the medication without knowing what Mr. Medvid was like before. At most, it was possible to conclude that he was not oversedated or "groggy" from medication.

According to the testimony of Mr. Sell, Dr. Caruthers was present during the interview on the "Salvia". He recorded none of his observations of Mr. Medvid's mental status at this time in the medical report. He also did not record any notes of his examination on the 29th in his reports. If any medical or psychiatric history was taken it should have been recorded in his report.

If the only goal was to determine if there was a life threatening physical injury or illness, the examinations were probably adequate. They are not sufficient (nor were they offered as being sufficient) to determine Mr. Medvid's competence to return home. For our review it would have been helpful to have seen a more complete neurological evaluation noting pertinent negatives such as the presence or absence of nystagmus. It is important to note that more information was presented during the hearings by both Doctors Hunt and Caruthers and that it was better organized (e.g. the mental status evaluation by Dr. Hunt) than in the reports themselves.

The psychiatric evaluation and report concerning the evaluation of Miroslav Medvid posed a number of unique and unusual problems. Dr. Hunt's task was rendered difficult by the fact that clear guidelines for this type of evaluation had not been previously formulated. Any critique of the psychiatric examination and report must therefore be tempered by these considerations. Nevertheless, we feel that it is necessary to elucidate some of the shortcomings of Dr. Hunt's report and examination. For the report these can be divided into issues of context, content, and style.

From the beginning of the consultation, the context of the examination was complicated by a number of unusual factors:

1. This was an involuntary evaluation, i.e. Mr. Medvid was not requesting the evaluation. There was no physician/patient relationship. This examination was more akin to a court ordered evaluation.
2. The examination was performed in the presence of Soviet officials.
3. The examination was conducted through a translator.
4. The examination occurred following a period of isolation from U.S. contact.
5. Psychotropic medication had been administered by the Soviet physician.
6. There was Soviet political pressure to complete the evaluation and make a decision.
7. The examination was conducted away from a medical setting which made routine laboratory studies more difficult to obtain.
8. The examination was conducted following a coerced return of Mr. Medvid by U.S. officials to the Soviet ship which may have altered his attitude toward them.
9. The psychiatrist was not present during the interview on the "Salvia" and did not personally hear and observe what was told to Mr. Medvid about asylum.

All of the above combined to make a psychiatric evaluation more difficult, making it possible only to draw limited conclusions. Dr. Hunt felt that the amnesia reported by Mr. Medvid could not be ascribed to any injury and was not credible. We agree. The fact that defection is a crime in the Soviet Union may have contributed to Mr. Medvid's unwillingness to acknowledge his initial attempt to leave in the presence of Soviet officials. (In a prior incident (1970), a Lithuanian sailor tried to defect by jumping from a Soviet ship onto the deck of a U.S. Coast Guard cutter. He was erroneously returned to the Soviet ship, subsequently convicted of treason, and sentenced to a term in Siberia.) The events immediately preceding the psychiatric examination, which were beyond the control of the psychiatrist, may have strongly influenced the outcome.

In terms of the content of the psychiatric report, the major deficiency is the omission of significant data. This includes the failure to specify the precise circumstances of the evaluation (e.g. who was present) that accounted for the "atypical and adverse conditions and limitations" of the interviews. Even the simple listing of sources of information is not identified and itemized so that we do not know the extent of information on which Dr. Hunt based his conclusions. Did he have a description of Mr. Medvid's behavior and interactions at the police station? His behavior prior to his forced return and being medicated is relevant to assessing the diagnosis as well as the possible effects of medication at the time of the examination. We also do not know what were the "limitations of available data" and which, if any, were regarded as significant.

Given the fact that this was not an evaluation for treatment purposes, it should also have been recorded what Mr. Medvid was told regarding the nature and purpose of the psychiatric evaluation. There is also no prior history included. History relating to his development and prior psychiatric history, if any, would be necessary and important before drawing conclusions regarding the current diagnostic assessment. The data leading to the conclusion that Mr. Medvid "clearly understood his basic choices" is not presented. It is not clear in the report what he was told nor what he heard and understood.

Much has been made of the lack of urine and blood testing for drugs. While drug levels *per se* are not a sufficient basis from which to draw conclusions regarding competence or voluntariness, they can help to decide if intoxication is present or further observation is warranted. Certain drugs like alcohol, other sedatives, stimulants, narcotics, or psychedelics may affect decision making in ways that may not be immediately apparent to a clinical observer. These drugs may make someone *not care as much* about the consequences of a decision, or they may affect suggestibility. If the presence of narcotics or high blood levels of psychotropics were found, we believe that it might have affected the conclusions drawn by the physicians. Some medications may also induce manic or hypomanic states similar to the behavior exhibited by Mr. Medvid. In this light, and with the inevitable scrutiny that follows these evaluations, it seems prudent and important to obtain such samples in these circumstances. In the absence of tests, we do not know what drugs were, in fact, administered. We are, therefore, less able to be certain about their effect on his decision making process.

The style of the report makes an assessment by others very difficult. There are standard formats that psychiatrists use when writing formal reports, especially when these reports will be utilized for legal or quasi-legal purposes. The usual format should have clearly demarcated sections which separate data from opinions and diagnosis (see the "Advice" section below for a detailed outline). The data relating to competence as well as the standard for competence should be specified. Dr. Hunt failed to follow such a format so that it is difficult to separate data from opinion in his report.

The report style includes the use of much informal language, along with other inappropriate and global conclusions e.g. " `Grabbing for the glitter and gusto' rather than on any deep-rooted political or moral beliefs." Likewise, conclusions regarding Mr. Medvid's motivation as "impulsive" or "immature" seem inappropriate and premature given the duration of the evaluation and the amount of history available. Paragraphs numbered 12-15 contain much speculation with regard to what happened to Mr. Medvid while back on the Soviet ship and out of contact with the U.S. officials. This only raises doubts about the degree of speculation occurring in the primary evaluation of Mr. Medvid's competence and voluntariness. The emphasis should have been on the narrow examination and evaluation of his current mental status and the relationship of his capacities to the specific questions regarding competence, rather than a full historical or interpretive reconstruction of the chain of events.

Dr. Hunt concluded that "MM was assessed to be, as competent as basically any Soviet citizen to make a decision in regard to the issue of defection." There is uncertainty about what standard Dr. Hunt used. In his report and testimony he seems to equate competency with the absence of psychosis. This is insufficient and wrong. To say that Mr. Medvid is competent is incomplete. Competence demands a context; a person is not simply competent. He is competent to do something. The standards for competence to stand trial, to make a confession, to be married, to make a will, or to be executed are all different. What are the standards for competence to make a decision to return home in this circumstance? Dr. Hunt did not record the definition of the competence standard that he used. The conclusion merely stated that "the individual was clearly competent and not psychotic".

Dr. Hunt's failure to discuss this issue primarily reflects the lack of available articulated standards.

The failure to specify a competence standard may be somewhat understandable. Neither the pertinent regulations nor case law describes just what the standard should be. We offer below our own conclusions on how the standard should be understood. But first it will be helpful to review other recent cases bearing some similarities to the Medvid case. These involve instances where doubt about the voluntariness of the alien's departure arose, and a psychiatrist's involvement might have been considered.

V. PRIOR INCIDENTS

The following recent cases are not included for critical review, as the information was derived from newspaper reports and is, therefore, considered incomplete. The purpose is to review the possible categories of cases so that guidelines will be able to address the situations most likely to occur.

1. Lyudmilla Vlasova

Aleksandr Godunov, the Soviet ballet dancer, defected to the United States in 1979 while in New York with the Bolshoi. He told State Department officials that his wife, Lyudmilla Vlasova, also on tour with the Bolshoi was being returned to the Soviet Union against her will. He said that the Soviet Union would force her "to leave the United States without my seeing her again." "I very much want my wife to stay with me here in the United States." Acting on Mr. Godunov's fears, the State Department ordered the Immigration and Naturalization Service officials in New York not to let Ms. Vlasova leave the country. Apparently moving in opposition to an earlier agreement with the State Department, Soviet officials in New York brought Ms. Vlasova to the airport and boarded her on an Aeroflot jet liner before the immigration officials received the message that she was not to depart. The situation deteriorated into a diplomatic struggle between the Soviets and the Americans as the jet was blockaded on the runway of Kennedy Airport for three days. (New York Times A1, C1,August 29, 1979.) Much of the debate concerned the Soviet's refusal to allow American officials to talk with Ms. Vlasova. Instead they issued what they claimed was her statement "I love my husband but he made his decision to stay here and I have made mine to leave." (New York Times A28, C1, August 26, 1979.) After three days of stalemates, Soviet officials brought Ms. Vlasova off the plane into a "mobile lounge" parked on the runway. There, during a twenty minute interview in the presence of Soviet officials, Ms. Vlasova told Donald F. McHenry, Deputy Representative to the United Nations, through a State Department translator that she wished to return to the Soviet Union. The New York Times reported the exchange:

> "Miss Vlasova, clad in the same black jump suit and gold necklace she had worn when she went aboard Friday, stepped into the lounge and, in the presence of six Soviet officials, six American officials and Mr. Godunov's lawyer, Orville H. Schell, told of her intention to go home."
> "Only Miss Vlasova and Mr. McHenry, who sat across from each other, and a State Department interpreter, spoke during the interview, which participants later described as relaxed and informal."
> "Mr. McHenry, in a news conference in the terminal immediately afterward, recalled: "We asked if anyone had threatened her and she very humorously asked, `Do I look like I've been threatened?' I must confess she just looked like a ballerina."
> "She was in remarkably good spirits," said Mr. McHenry, who described the tone of the interview as "friendly and warm" and Miss Vlasova as "lively, bright, alert and very informal-very alert to the situation."
> "I was not engaged in persuasion one way or the other" Mr. McHenry recalled. "I wanted to make sure she was doing what she wanted to do. We did make it clear that she didn't have to decide today-that she could postpone it." He explained that American officials might have allowed the plane and other passengers to depart while Miss Vlasova stayed pending a decision, but that she declined the offer."
> "Mr. McHenry quoted Miss Vlasova as having said she had not communicated with her husband through the weekend. At that point, Mr. McHenry said, she was asked whether there was "anyone she wanted to speak to, or anything she wanted to do.""She responded with the Russian negative."
> "Asked at the news conference whether he still questioned her desire to go home, Mr. McHenry said he was "no psychologist," but added: "I have no doubt that's her desire now." In response to another question, he said "It didn't strike me that she was drugged, doped or under any stress. It makes you wonder why it took so long to arrange this."...Asked whether he thought Miss Vlasova had spoken freely, Mr. Schell (Mr. Godunov's lawyer) said "I couldn't tell for sure. I wasn't able to tell. After all, she's an actress." (N.Y. Times B4, Col. 3 August 28, 1979.)

At no time were U.S. officials allowed to speak with her alone.

In some respects Miss Vlasova's situation was similar to seaman Medvid's, particularly in that the United States relied on the individual's own statements in allowing them to return to the Soviet Union. In both cases, the circumstances gave rise to suspicions of Soviet coercion. Immediately after Mr. Godunov's defection, Miss Vlasova was escorted to the jet airliner by eight men believed to be Soviet Security Agents. She was held in seclusion for four days before being allowed to speak with American officials. At no time was she left alone with the Americans. Further, one of the Soviets accompanying her was the chief medical officer of the Soviet Mission, thus raising the issue of medical intervention or even speculations by the press of "drugging."

2. Andrei Berezhkov

On August 10, 1983 the sixteen year old son of a Soviet Diplomat based in Washington, D.C. vanished. Although he returned home within 24 hours, a letter written in English and dated Tuesday, August 9, arrived on Thursday, August 11 at the New York Times and the White House. The letter signed "Andy Berezhkov" asked for asylum stating, "I hate my country and its rules and I love your country." By the time the letters were received, Berezhkov had returned home and his parents were arranging for his immediate flight to the Soviet Union. Alerted to the letters, the State Department informed the Soviets they wanted to interview Andrei "to ascertain his intentions" and that Andrei should not leave the country prior to such an interview. (New York Times A3, C4, August 12, 1983).

Much as they did in the Vlasova case, the Soviets reacted by keeping Andrei secluded. The State Department continued to insist, stating "We're not going to let him out without interviewing him." A statement was issued, attributed to Andrei, denouncing the letter, claiming it was a fraud and that he did not wish to seek asylum. Finally, on Thursday, August 19, following the week of seclusion, the Soviets allowed the State Department officials and reporters to interview Andrei. Andrei's father and other Soviet officials were present during the interview. After talking with him, State Department officials claimed that they were convinced that he really did want to return to the Soviet Union. One official said that the State Department had developed emergency plans to protect Andrei at Dulles Airport if he wanted to stay. Once the boy began talking to reporters, they decided "he was just a teenager who had gotten into a mess." State Department officials described the incident to Bernard Gwertzman of the New York Times as follows:

> "When Richard Burt, Assistant Secretary of State of European Affairs, and Elliott Abrams, Assistant Secretary for Human Rights and Humanitarian Affairs, both met the youth at the airport, they became convinced, from his nonchalant answers to questions and his overall demeanor, that he was not a serious candidate for political asylum."
>
> "Besides observing the youth while he answered reporters' questions, Mr. Burt also spent about 45

> minutes with the family in informal discussion before the takeoff of the Trans-World Airlines plane for Paris, according to Alan D. Romberg, a department spokesman. That discussion, Mr. Romberg said, only fortified the impression that there was no reason not to allow him to leave with his parents."

Andrei was met in the airport in Moscow by "four or five men in suits who appeared to form an official welcoming party." His last words to American reporters were an explanation of his telling reporters in Washington, "Say hi to Mick Jagger. Because I love him," he replied. He then entered "a green Volga sedan and drove off to an unknown destination."

The Berezhkov case, again, presents mixed messages. Despite Andrei's disavowal, the White House and State Department asserted a belief that his letters were authentic: That at the time he wrote them, he did intend to seek asylum. The facsimile of his letter to the New York Times presented a reasonable plan, calling for arrival at the U.S. mission in New York on August 11th. Assuming he did intend to seek asylum when he wrote the letters, did he "voluntarily" change his mind? All reported sources agree that Andrei returned home "voluntarily." However, even if the letters were genuine, that does not preclude the conclusion that they were an impulsive act motivated by his family's impending return to Moscow.

3. Merab Kurashvili

Merab Kurashvili, age 34, and an associate professor of civil engineering at the Georgian Polytechnical Institute in Tbilsi,was a participant in a Soviet/American exchange program at the University of California at Berkeley. While there, he and Gergory Smelyi, another exchange student, were arrested for shoplifting. Both the United States State Department and the Russian Embassy were notified immediately, and the incident appeared to be resolved.

However, a few days later on January 10, 1972, Mr. Kurashvili and Mr. Smelyi were boarding a Pan American jet in N.Y. accompanied by Soviet officials when Pan Am clerks "spotted him bleeding profusely" from self-inflicted wounds to his wrists and throat. The New York Times reports that Kurashvili was taken to Jamaica Hospital, Queens. At the hospital spokesmen said "he was very calm, but it seemed he wanted to die...At one point he tried to remove the tubes through which he was getting intravenous transfusions." Six Soviet officials with diplomatic passports arrived at the hospital. Included among them was "A Dr. Sugin, a physician who spoke no English."

The State Department was alerted of Kurashvili's condition almost immediately. According to Charles W. Bray 3d, a State Department official, the issue of asylum came up immediately. He told the

New York Times that a "Port Authority policeman had been instructed by telephone to ask the injured student whether he wanted asylum."

Apparently, Kurashvili did not want asylum. Mr. Bray reported that on two occasions the student had said he wanted to go home. He further told the policeman, "I did it because I did not like myself at the time."

According to the hospital, the Soviets were anxious to sign him out, and did so. The hospital noted that Kurashvili made no objection to leaving. "[He] didn't show any emotion. He just sat there like a blob." (N.Y. Times, Jan. 11, 1972, A29, Col.2.)

The State Department insisted that even though Kurashvili had told the Port Authority police officer he did not wish asylum, they wanted to talk to him before he left the country. The next day, January 11, Kurashvili was reported to be recovering in the Soviet Mission in New York and couldn't be interviewed, "due to illness." The State Department refused to allow him to leave the country. (N.Y. Times, Jan 12, 1972 A31, Col. 1.)

On January 12, the Soviets brought Kurashvili to the airport. After six hours, he was allowed to speak to State Department officials who found "that his desire to leave was voluntary." Kurashvili was then allowed to depart.

These cases divide into two rough categories: (1) cases where the individual made affirmative statements indicating a desire to stay in this country, followed later by statements to the contrary (Medvid, Berezhkov); (2) cases involving no contradictory verbal utterances, but where other evidence cast doubt on the voluntariness of the person's departure. This other evidence might consist of (a) the individual's own acts (Kurashvili), or (b) evidence believed trustworthy from third parties (Vlasova).

VI. RECOMMENDATIONS FOR IMPROVED STANDARDS AND PROCEDURES

We operated under the assumption that when a person clearly requests asylum, even if mentally disordered, the ordinary asylum application process will begin, including permission to remain in this country pending a final decision (which may take months or years). Such a process allows sufficient time for a more extensive evaluation to occur before full asylum status would be granted. This report makes no attempt to discuss the evaluation of asylum applicants after they have requested asylum and have been accepted for further evaluation.

We feel it necessary, however, to add one related comment. The best way to avoid future incidents like the Medvid case, with all their difficult diplomatic and domestic political ramifications, will be to ensure that officials begin the full course of regular asylum procedures whenever an individual is reasonably understood as requesting asylum or expressing some fear of returning to the home country. We understand that standard INS and State Department procedures -- not followed here -- call for such a response, and indeed provide added safeguards in cases involving nationals from the Soviet Union or other East bloc countries. See Ramirez-Osorio v. INS, 745 F. 2d 937 (5th Cir. 1984); Dept. of State, Public Notice 351 37 Fed. Reg. 3447 (1972); Public Notice 728, 45 Fed. Reg. 70621 (1980). The damage done by an initial forcible return to the custody of foreign officials in such circumstances cannot be wholly undone by later arrangements for evaluation, however carefully designed. Nevertheless, as our account of other similar cases reveals, even if INS procedures are followed, we can still expect to find occasional instances where people question the circumstances of an alien's departure. With this in mind, we proceed to describe our recommended set of standards and procedures.

Voluntariness. The pertinent regulations of the State Department and the INS give authority to prevent an alien's departure "where doubt exist whether such alien is departing or seeking to depart voluntarily..." 8 C.F.R. 215.3(j). We are unaware of any regulations or case law that further describes the standards for "voluntariness" or competency in this situation. But we believe that the basic regulation is sufficient for the guidance of those decision-makers who trigger the procedure at the initial stage. They need apply only a common-sense notion of "voluntariness" at that point, for they are deciding only whether enough doubt exists to halt the departure temporarily, for purposes of further inquiry. We expect that these cases will remain relatively rare, and the initial call will continue to be made by immigration or diplomatic officials, acting on the basis of whatever evidence is available.

Once the departure control procedure is triggered on this ground, however, it becomes important to clarify the standard and specify what sort of assessment is to be made of the individual's state of mind. Although the regulation speaks of "voluntariness," this concept is a complex and difficult one in the literature. Some hopes have been expressed, regarding Medvid-type incidents, that a psychiatric evaluation could identify the "true desire" of the person involved. This is too much to expect. Virtually all human choices are constrained to some extent by outside factors, and traces of influence or pressure of a variety of types can be observed in many decisions. Deciding which influences vitiate free choice and which are consistent with such choice has provoked widespread legal and philosophical debate.

Asylum seekers -- and even applicants who have been granted permanent asylum -- do sometimes change their minds. Some choose to return home to situations most of us would regard as unacceptable and fraught with genuine dangers. For them, the risks of return have come to be outweighed by the judgments about the benefits of return and the disadvantages of continued exile. They may be motivated by disappointment at the difficulties of adjusting to life in the country of asylum, by patriotism, by inducements offered by the home country, by concern for the fate of families or friends left behind (including information received about threats to those people), or a variety of other matters. We have tried here not to underestimate the inherent difficulty of a decision to defect or seek asylum. The difficulty does not end once the person crosses the line and actually asks for asylum; he may well see the risks and advantages differently over time. Even when we might disagree with the decision, we should take care not to rush to a judgment of involuntariness -- especially when an evaluation must be made in a difficult cross-cultural context.

Regarding the standard of voluntariness, we find very little guidance in the current regulations or case law. There is no clear legal definition of voluntariness. The role and importance of voluntariness for informed consent was emphatic and clear, thirty years ago, in the Nuremberg Code of standards for using individuals as research subjects:

> "The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to consent, should be so situated as to be able to exercise free power of choice without the intervention of any element of force, fraud, deceit, duress, overreaching or other ulterior form of constraint or coercion..."

This definition clearly cannot describe situations like the Medvid case. Nor is U.S. criminal and civil case law useful. For example, although the courts have decided many cases evaluating the voluntariness of a confession made to the police, those standards cannot be readily employed here. A confession made after the police threatened harm to an individual's family would certainly be suppressed as involuntary. But a similar result is not so easily accomplished in the case of potential asylum seekers who learn of similar threats. In the criminal confession setting, the remedy is straightforward. The court simply excludes the confession or other testimony influenced by such coercion. If necessary, the accused goes free. The cases of potential defectors, cannot be so easily resolved. One may choose to ignore the first statement of a desire to return made after such threats, but if the individual persists in expressing that desire, it would be quite harsh to hold him forever to the initial request for asylum. We need only imagine how Americans would react to similar treatment of an American who once sought to stay in a foreign country but later steadfastly insists on a right to return home.

The U.S. government cannot control for all possible threats or inducements made by foreign countries to potential asylum seekers. Therefore the definition of voluntariness here must be that the individuals can decide whether to request asylum, without fear for their _personal_ safety, if they now choose to stay. Overcoming any prior threats about personal safety depends less on psychiatric evaluation than on the structuring of the interview setting and the assurances given in that setting to the individual. The State Department seems clear about these issues and has attempted to deal with them by establishing an appropriate environment for the interviews. Holding the interview in American facilities, rather than aboard ship or in the country's embassy, for example, is important. Taking adequate time to explain the role of the American officials involved and the options open to the individual will also be helpful. If the person has been the victim of American mishandling earlier (as was the case with Medvid), the task of communicating such assurances may be more difficult. Nevertheless, patient efforts to this end are necessary. The aim is to communicate that the United States is ready and able to honor any request now made to stay in this country. A discreet backup show of force might, in some circumstances, be useful to underscore this message. We cannot erase any threats or personal mistreatment by the other country's officials that may have occurred before the interview, of course, but we can structure the interview situation to provide maximum assurance that personal mistreatment will not recur if the person now asks to stay -- precisely because the United States would immediately protect the person and remove him from the custody of officials who may have threatened such consequences.

First stage: interview with U.S. INS or State Department Officials.

According to current INS policy, when doubts arise about the voluntariness of an alien's departure, the alien is temporarily prevented from leaving. Regulations authorize various kinds of examinations and hearings. They also grant U.S. officials extensive authority to decide who may be present at such examinations. 8 C.F.R. 215.2(c). We have kept in mind, however, in designing our recommended procedures, that this broad authority to structure the examination would be often limited in practice by diplomatic considerations.

Ordinarily the next step has been an interview with the individual, rather than proceeding immediately to psychiatric evaluations or formal hearings before an immigration judge, and we endorse this practice. The purpose of the interview is to provide the assurances of personal safety outlined in the preceding section, in order to enhance the prospects that a voluntary choice may now be expressed. Ordinarily, if the person

Although there is overlap between the tests in actual practice, we separate them for conceptual clarity. The tests can be summarized into five different categories:

1. Is the individual "evidencing" a choice?
2. Is there a "Reasonable" outcome of the choice?
3. Is the choice based on "rational" reasons?
4. Does the individual have the "ability to understand" the choice?
5. Does the individual have an "actual understanding" of the choice?

1. "Evidencing" a choice:
The "evidencing of choice" test threshold is set at a very low level. In this test the competent individual, in the present circumstance, is one who evidences a preference for or against return to his country. This test does not address the quality of the individual's decision but only the presence or absence of a decision. This test does not assure an individual's understanding of the choice or that it is a rational choice. It is behavioral in orientation. It seems to be the present standard used by U.S. officials for asylum applicants, unless there are substantial reasons to doubt their competence.

2. "Reasonable" outcome of choice:
The next test of competency entails evaluating the individual's capacity to reach the "reasonable" or the "responsible" decision. The emphasis in this test is on outcome rather than on the mere fact of a decision or how it has been reached. The individual who fails to make a decision that is roughly congruent with the decision that a "reasonable" person in like circumstances would make would be viewed as incompetent. Since this test promotes social goals at the expense of personal autonomy, we feel that this is not an appropriate standard. It is also not useful here because of serious cultural problems e.g. what would a "reasonable" Russian or other foreign national choose?

3. "Rational" reasons:
Senator Simpson suggested that the standard was "reasonable medical certainty that Mr. Medvid was medically, mentally and physically capable of making a rational decision" concerning asylum application. We have not adopted this test, although it has clinical appeal for some of the same reasons described under the "reasonable" outcome test. Using the assessment of "rational reasons" as a test poses considerable definitional problems. A major obstacle to the successful use of such a test is the subjective nature of any assessment. Is an action to be regarded as rational if and only if it is based on true beliefs (Hume)? This view does not allow for irrational desires that are not based upon delusions. There is no accepted definition of rational

now states that he wishes to stay in this country, U.S. officials should remove him from the custody of foreign officials, provide any additional protection that appears necessary, and begin regular asylum processing.

We see two circumstances under which a psychiatric evaluation, the second stage of our recommended procedures, would be appropriate. The first is discretionary and the second is mandatory.

1. If there is a question whether the potential asylum applicant has "evidenced a choice" or that choice is not clearly communicated.
2. If the potential asylum applicant evidences a choice that he wishes to return to his country of origin but does so in the presence of "obvious irrationality, disorientation, intoxication, suicidal behavior or preoccupation."

Under the first condition a request for a psychiatric evaluation is discretionary on the part of officials if they feel that the situation cannot be clarified by their usual practices. Such circumstances might occur when asylum seekers change their mind repetitively, when decision making becomes paralyzed, or when there is clear behavioral evidence that they wish to defect, but then changes of mind occur in an inexplicable way, or because of errors in their handling by U.S. officials. Lack of evidence of a clear choice might be seen in physically or psychiatrically disordered individuals and thus an examination may be warranted.

Second-stage: psychiatric evaluation: the competency standard.

The role of the psychiatrist at the second stage is to assess:

> "Whether the person lacks substantial capacity to make an understanding and voluntary choice to return to his or her country of origin."

We recommend this standard of competency for the reasons outlined below.

Several standards for competency have been proposed in the psychiatric literature and judicial commentary 1, 2. While these proposals were introduced in the context of consent to research and treatment we feel the same standards are relevant here.

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[1] Appelbaum, Paul, M.D., and Roth, Loren, M.D., Competency to Consent to Research, Archives General Psychiatry, Vol 39, August 1982 PP 951-958.

[2] Roth, Loren, M.D.MPH. Meisel, Alan, J.D., Lidz, Charles, Ph.D., Tests of Competency to Consent to Treatment, American Journal of Psychiatry, Vol 134, March 1977 PP 279-284.

in this context. Distinguishing rational from irrational reasons presents substantial difficulties. Even if the individual's reasons appear irrational, e.g. delusional, it is difficult to prove that the actual decision-making process has been the product of such irrationality. A delusional person may have perfectly good reasons for wishing to seek or refuse asylum. Using "rationality" is too demanding a test for determining whether a person is competent to make a decision to return home.

4. "Ability to understand":
The "ability to understand" test, meaning the ability of the individual to understand the risks, benefits, and alternatives, is probably the most consistent with the law of informed consent. Decision-making, under this test, need not be rational either in the result or the process. An individual is permitted to make choices that others might deem unwise. Nevertheless, at a minimum, the individual must manifest sufficient ability to understand information even if that information is weighed in a manner differently from other evaluators. What matters in this test is that the individual is able to comprehend the elements that are presumed to be an important part of the decision-making at hand. A person's ability to understand may be tested by asking the individual a series of questions concerning risks, benefits, and alternatives. In our opinion, this seems to be an appropriate threshold for competency in "Medvid" type situations.

5. "Actual understanding":
The test of "actual understanding" requires that the physician would have an obligation to educate the person and directly ascertain whether he or she has, in fact, understood. If not, according to this test, the individual may not have provided informed consent. Depending on how sophisticated a level of understanding is to be required, this test delineates a potentially high level of competency, one that may be difficult to achieve. Other difficulties involve problems in defining what constitutes adequate understanding. We feel that this level of understanding places too high a threshold for this situation.

In sum, we feel that the appropriate standard for competency should be the "ability to understand" those areas that would be considered relevant to the making of a choice. This would include the ability to understand the nature of an asylum request and the decision to return, the risks, and available options. This requires the knowledge that the individual has a choice to make, and that he knows who he is, where he is, and what he is doing in signing a paper, i.e. the consequences of electing to seek asylum or return home.

VII. RECOMMENDED PSYCHIATRIC EVALUATION PROCEDURES

Any psychiatric examination should take place in a protected setting, not on a foreign vessel or in a foreign diplomatic facility. Instead, we recommend a more conventional setting where the potential asylum applicant can receive rest, refreshment, etc. Preferably the interview should not occur in the presence of any foreign officials or non-medical U.S. personnel. If diplomatic considerations require agreeing to demands for greater monitoring, ways to accomplish this include having the foreign officials in the room next door with T.V. monitors, or by conducting the interviews behind one-way screens. The asylum applicant should, of course, be informed of the nature of monitoring. It is beyond our capacity to delineate these pragmatics more specifically. The opportunity for monitoring might allay some concern about parallel rules applied to U.S. citizens in the Soviet Union or other foreign countries, but the principle of having an interview in as private a setting as possible should be followed. We recommend that the potential asylum applicant be given the option of having other people present in the protected area (e.g., permit communication with friends or relatives, permit telephone calls to home and other things which may be helpful in reaching a decision). If the potential asylum applicant indicates a wish to consult with officials from the home country, then that should be permitted. Infringement of the applicant's rights is unfair and can only bias their decision making.

We also recommend full psychiatric (see "advice" section below) and medical workup to the extent deemed medically necessary and feasible within 48 hours, including testing for drugs (urine and blood samples). Possibly other tests should be done such as an EEG or x-rays. This would be a function of medical judgment. These medical tests should be conducted with the applicant's consent, or in the absence of any objection. If the asylum applicant objects to such tests, then they should not be done, save for instances of medical emergency. Any medical emergency requires medical testing (even treatment), over objections. Should a medical emergency arise, at least two physicians should, ideally, make the decision to treat. Furthermore, we would recommend foreign physician involvement to confirm that an actual medical emergency exists. Treatment should not be done in secret. During this time period, to the maximum extent possible, foreign officials should be prevented from communicating directly with the asylum applicant so as to prevent verbal or other reminders of any previously made threats of harm to the individual, the family, etc. If the individual was threatened earlier, we cannot, of course, be sure that the threats have had no effect on the current decision. But we can prevent the person from being reminded or threatened again.

If the competence determination remains unclear, the psychiatrist should request a second psychiatric examination. The second examination should be conducted by an independent civilian psychiatrist over the next 48-72 hours. The role of the second independent psychiatrist is to confirm the presence of any of the above conditions and to determine whether the asylum applicant meets the relevant standard and still maintains a wish to return home. Assuming these conditions are absent, and that the potential asylum applicant meets the standard for competence and voluntariness, then the psychiatric evaluation should be concluded.

At this point it should be reiterated that the psychiatrist is a consultant to the State Department or other governmental agency. The psychiatrist is not, and should not be, the ultimate decision maker regarding competence, the decision to return the potential applicant, or the length of time the individual is detained. These questions must be decided by the appropriate governmental or judicial officials. Primarily, it is not an appropriate role for a consultant. The psychiatrist will usually not be aware of all the facts or factors that are influencing the situation.

A list of independent psychiatrists willing to perform these evaluations should be developed and maintained. Preferably, they should be able to speak the person's native language. There should be an attempt to use the same psychiatrists in these cases to give them experience.

If, at the end of three days, the relevant conditions persist and/or the potential asylum applicant fails to meet the standard for competence, the situation then becomes even more complicated. If the conditions diagnosed are believed to be temporary and likely to improve shortly, (i.e. clearing intoxication etc.,) then medical information should be given to help officials decide if a longer period of observation is both medically desirable and politically feasible. If the conditions do not appear likely to clear up shortly, or the applicant refuses to give evidence by which his capacity to understand can be assessed, U.S. officials then have three difficult options to select from:

1. Continued observation, for what may be a lengthy period.
2. Treatment to restore competency.
3. Return to the applicant's country of origin; relying on the expressed wish to return, despite substantial reasons to question the individual's competence to make an understanding decision.

VIII. ADVICE TO PSYCHIATRISTS

Psychiatrists who undertake the type of assessment required in the asylum cases should be well trained, experienced clinicians, who have worked in a consultative context. They should also have substantial familiarity with the preparation of forensic reports, and with forensic principles such as competency, informed consent, and voluntariness. Such psychiatrists should ideally be civilians, although circumstances may require the initial evaluation to be performed by a military or governmental employee. They should also have no conflicts of interest that might interfere with the ability to perform a thorough and objective examination.

The Medvid case underlines the need for psychiatrists performing such assessments to be sensitive to issues that arise from the cross-cultural context. Where possible, it is desirable that the psychiatrist be fluent in the language used by the potential asylum applicant. Misunderstandings and misreadings are more likely to occur if the psychiatrist is using an interpreter to communicate with the potential asylum applicant. Patience, caution, and repetition will aid in conquering these linguistic difficulties.

However, more subtly problematic are the strong prejudices that American psychiatrists might feel against the cultural and political values of the other country, particularly where those countries are Communist. Such feelings can inadvertently lead to assumptions that bias the psychiatric assessment. For example, once Mr. Medvid had returned to the Soviet ship, it might be assumed that he was beaten or tortured. The psychiatrist should certainly keep all eyes and ears open, remaining alert to consider the available evidence. But barring any medical or other clear evidence, it should not be concluded that Mr. Medvid was beaten. Similarly, strong positive feelings about the United States can lead psychiatrists to assert that asylum applicants want to stay in the U.S., in the absence of any supporting evidence. Psychiatrists should be aware that their feelings about America's treatment of another country, or their aggressive feelings towards that other country might complicate the assessment of a potential asylum applicant. The likelihood of having stereotypic notions about other countries and cultures is only one of the reasons that the examiner should minimize speculation in any final reports about the motivation of the potential asylum applicant or about what may have happened when there was no observation by U.S. officials.

Psychiatrists must clarify the tasks of their consultation before commencing the examination of the asylum applicant. It is necessary for the psychiatrist to explain to the asylum applicant the nature and purpose of the examination before it begins, or as soon as possible. In addition, the nature of the relationship between the psychiatrist and those who have sought the psychiatrist's services should be made explicit. Any restriction that seeks to curtail the independence of the psychiatrist should be resisted. The report should reflect the precision of the tasks and parameters of the examination, how long the asylum applicant was examined, who was present in the room, and what tests were ordered.

It is also important for psychiatrists to avoid undertaking tasks that are clearly outside medical expertise. For example, it may be indicated that someone explain the risks and benefits of defection to the potential applicant. But this should not be part of the psychiatrist's functions. On the other hand, if it is decided that such information be given to the asylum applicant, the psychiatrist should ideally be present when this is done. Being present at such a meeting facilitates the psychiatrist's efforts to assess the asylum applicant's handling of information necessary to make an understanding and voluntary choice. It is also appropriate to review with the applicant what he has been told so that his awareness and memory may be assessed.

In these cases, psychiatrists must insist that they be provided the time needed to perform a complete and thorough examination. They must also be allowed access to collateral materials and individuals who can provide useful information about the behavior and thinking of the potential applicant. The site should be conducive to carrying out a careful examination. Whenever elements that are considered necessary for the examination are not provided, the psychiatrist should specifically note this in the report. In some cases, it may be worthwhile to defer the examination or possibly to refuse participation in the process, if minimally acceptable conditions for an examination cannot be established. Psychiatrists should make an audio or audio-visual recording of the examination, if possible, since these cases are likely to generate detailed review and scrutiny. At a minimum, detailed notes should be kept.

The psychiatric examination should include the standard sections such as history of the present problem, past history, family history, and mental status. Collateral medical examinations and laboratory tests that are indicated should be performed. If the standards are not clear or more specific expertise (e.g. psychopharmacology) is needed, the psychiatrist should be willing to consult with other experts before drawing conclusions that may be erroneous.

In arriving at his conclusions regarding competence, the psychiatrist should consider several factors. Among these are:

1) Is a choice currently and consistently being evidenced?
2) If there has been a change of mind, is there an understandable explanation?
3) Is there an ability to understand the consequences of a decision to return to his country of origin or ask for political asylum in the U.S.?
4) Is there an ability to understand what political asylum means?

5) Is there a mental or physical disorder present that affects reasoning?
6) Have any drugs been administered? Has this been verified by laboratory testing? What is the effect of any drugs that have been administered?
7) To what known coercive pressures has the individual been subjected?
8) Have controllable coercive pressures been sufficiently neutralized so that a decision can be freely stated?

The data that forms the basis for the above should be clearly documented.

The psychiatrist's report should include the following clearly demarcated sections: Introduction - which identifies the person examined, the agency requesting the evaluation, and the purpose of the examination; Sources of Information and when obtained; Nature of Confidentiality; History of the Present Problem; Relevant Past History; Mental Status Examination; Competence Section- data relating to the standard; Summary of Medical and Psychological testing; Diagnostic and Forensic Formulation-opinion relating the data to the legal standard; Recommendations-which relate to the tasks of the examination.

Finally, no opinion should be given on the ultimate question of whether the defecting individual should be allowed to stay in the U.S. or sent back to another country. This remains the responsibility of the INS and the State Department.

It should be clearly recognized that these guidelines will not be applicable to every single case in quite the same way. But psychiatrists, called upon to perform these examinations in this context, will be served well by retaining a general knowledge of them. Political pressures may demand a quick examination and rapid resolution of the issues. It will require energy and concentration to stay attuned to the requirements of a sound psychiatric examination in the midst of security and political demands to take short-cuts. If there is insufficient data from which to draw a conclusion regarding competence or voluntariness, no conclusions should be drawn.

IX. CONCLUSION

A significant issue in the Medvid case was the fact that this was one of the first times that a psychiatric evaluation was formally requested to help in the determination of the competence and voluntariness of a potential asylum applicant's decision to return to the U.S.S.R. after jumping ship and being prematurely returned by U.S. officials. The infrequency of these requests has retarded the development of procedures and clearly defined standards for psychiatrists who may be asked to consult.

We have reviewed the examination performed by the physicians in an effort to learn from their experience under difficult and demanding circumstances. As a consequence of that review we have attempted to develop guidelines and to define:

1. the types of circumstances in which it is appropriate to request a psychiatric evaluation;
2. the relevant standards for voluntariness and competence of decisions to return home, made by potential asylum applicants;
3. the conditions necessary to perform an adequate psychiatric evaluation;
4. the psychiatric and medical test data that needs to be collected and recorded.

We hope that the information provided in this report will help to create a set of procedures and standards that encourage effective psychiatric evaluations, which will provide useful information to the INS and State Department, as they make these difficult decisions.

We anticipate that these principles will be further refined and expanded as more experience and thought is brought to bear on this delicate matter, which has such enormous consequences for a person's life.

APPENDIX C: OTHER REFERENCED MATERIALS

1. *Medvid v. New Orleans Police Department,* (Civil Action No. 85-5065, November 6, 1985, EDLA), court transcript.

2. *Review of INS Procedures and Policy,* Report of Andrew J. Carmichael, Jr., Director, Special Task Force to Alan C. Nelson, Commissioner, INS.

3. *The Attempted Defection of Miroslav Medvid,* Hearings before the Subcommittee on Immigration and Refugee Policy of the Committee on the Judiciary, United States Senate, Ninety-ninth Congress, Second Session on "The Issues of Asylum Procedures for Eastern Bloc Defectors," February 5 and March 7, 1986, Serial NO. J-99-81, printed for the use of the Committee on the Judiciary, S.Hrg. 99-634.

4. *The Case of Miroslav Medvid,* Hearing and Markup before the Committee on Foreign Affairs and its Subcommittee on Europe and the Middle East, House of Representatives, Ninety-ninth Congress, Second Session on H.Res.314, November 7, 1985, printed for the use of the Committee on Foreign Affairs.

5. *The Miroslav Medvid Incident,* Report prepared by the Subcommittee on Immigration and Refugee Policy for the use of the Committee on the Judiciary, United States Senate, July 1986, printed for the use of the Committee on the Judiciary, S.Prt. 99-179.

6. *Examination of the Soviet Vessel "Marshal Konev" and Agricultural Commodities Relating to Grain Purchases, Hearing before the Committee on Agriculture, Nutrition and Forestry, United States Senate, Ninety-Ninth Congress, First Session, November 12, 1985, printed for the use of the Committee on Agriculture, Nutrition and Forestry, S.Hrg. 99-447.*

7. *Political Asylum Procedures for Alien Crewmen,* Hearings before the Subcommittee on Immigration and Refugee Policy of the Committee on the Judiciary, United States Senate, Ninety-Ninth Congress, First Session on "Political Asylum Procedures for Alien Crewmen and HowThey Were Applied to a Soviet Seaman, Miroslav Medvid," November 5 and 7, 1985, Serial No.J-99-68, printed for use of the Committee on the Judiciary, S.Hrg. 99-541.